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Wednesday
February 22, 1984

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Commodity Futures Trading Commission
Postal Rate Commission

Air Pollution Control
Environmental Protection Agency

Airmen
Air Force Department

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Education Department

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

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Presidential Documents

Title 3—

The President

Executive Order 12461 of February 17, 1984

Designating a Federal Retirement System Under Public Law 98–168

By the authority vested in me as President by the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (title II of Public Law 98–168) ("the Act"), it is hereby ordered as follows:

Section 1. The District of Columbia Police and Firefighters' Retirement and Disability System, insofar as it applies to Federal employees who are covered under section 203(a)(1) of the Act, is designated a covered retirement system under section 203(a)(2)(D) of the Act. The Secretary of the Treasury is designated the appropriate agency head with respect to such system, under section 205(a)(2)(D) of the Act. In discharging the responsibilities delegated by this Order, the Secretary shall be guided by the information and recommendations provided by the Mayor of the District of Columbia.

Sec. 2. This Order shall be effective as of January 1, 1984.

Ronald Reagan

THE WHITE HOUSE,
February 17, 1984.

[FR Doc. 84–4873
Filed 2–21–84; 10:17 am]
Billing code 3195–01–M

Presidential Documents

Executive Order 12462 of February 17, 1984

President's Advisory Committee on Mediation and Conciliation

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), in order to create an advisory committee on methods of mediating and on the voluntary adjustment of labor disputes, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the President's Advisory Committee on Mediation and Conciliation. The Committee shall be composed of not more than twelve members who shall be appointed or designated by the President from among persons with special knowledge and familiarity with labor relations problems. The Director of the Federal Mediation and Conciliation Service is hereby designated as Chairman of the Advisory Committee.

Sec. 2. *Functions.* (a) The Committee shall advise the President and the Director of the Federal Mediation and Conciliation Service on methods of improving the efficiency of arbitration of disputes arising under collective bargaining agreements, and on other matters, not involving particular labor disputes, of general significance to strengthening and increasing the effectiveness of bilateral dispute resolution mechanisms under such agreements.

(b) In performance of its advisory responsibilities, the Committee shall report to the President and the Director of the Federal Mediation and Conciliation Service from time to time as requested.

(c) The Committee will undertake a review of regulations promulgated by the Federal Mediation and Conciliation Service that affect established arbitration and mediation procedures, and offer their findings and recommendations in a report to the President and the Director of the Federal Mediation and Conciliation Service within nine months of the Committee's establishment.

Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Committee such information as it may require to carry out its functions.

(b) Members of the Committee shall serve without compensation for their work on the Committee. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) The Director of the Federal Mediation and Conciliation Service shall provide the Committee with such administrative services, facilities, staff and other support as may be necessary for the effective performance of its functions.

Sec. 4. *General.* (a) Notwithstanding the provisions of any other Executive Order, the responsibilities of the President under the Federal Advisory Committee Act, as amended, except that of reporting annually to the Congress, which are applicable to the Committee established by this Order, shall be performed by the Director of the Federal Mediation and Conciliation Service, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Committee shall terminate on December 31, 1984, unless sooner extended.

Ronald Reagan

THE WHITE HOUSE,
February 17, 1984.

[FR Doc. 84-4874
Filed 2-21-84; 10:18 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 594, Navel Orange Reg. 593, Amdt. 1; Navel Orange Reg. 592, Amdt. 2]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 594 establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period February 24–March 1, 1984. Regulation 593, Amendment 1, increases the quantity of such oranges that may be shipped during the period February 17–23, 1984, and Regulation 592, Amendment 2, increases the quantity of such oranges that may be shipped during the period February 10–16, 1984. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 594 becomes effective February 24, 1984, and the amendments are effective for the periods February 17–23, 1984, and February 10–16, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" 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.

This regulation and amendments are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the Act.

These actions are consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a public meeting on September 27, 1983. The committee met again publicly on February 14, 1984 at Ventura, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports and the demand for navel oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information on views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. Section 907.894 is added as follows:

§ 907.894 Navel Orange Regulation 594.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 24, 1984, through March 1, 1984, are established as follows:

(a) District 1: 1,700, 000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

2. Section 907.893 Navel Orange Regulation 593 paragraphs (a) through (d) are hereby revised to read:

§ 907.893 Navel Orange Regulation 593.

(a) District 1: 1,800,000; cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

3. Section 907.892 Navel Orange Regulation 592 (49 FR 4459) paragraphs (a) through (d) are hereby revised to read:

§ 907.892 Navel Orange Regulation 592.

(a) District 1: 1,850,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: February 15, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–2120 Filed 2–21–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

Animal Drugs, Feeds, and Related Products; Nitrofurazone Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Squire Laboratories, Inc., providing for use of a nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections on horses. The regulations are also amended to add Squire Laboratories, Inc., to the list of sponsors of approved NADA's.

EFFECTIVE DATE: February 22, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Bureau of Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Squire Laboratories, Inc., 100 Mill St., Revere, MA 02151, is sponsor of NADA 132–427 for use of a 0.2-percent nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections of wounds, burns, and cutaneous ulcers of horses. The application is approved, and the regulations are amended accordingly. The regulations are also amended to add Squire Laboratories, Inc., to the list of sponsors of approved NADA's. The basis of this approval is discussed in the freedom of information summary.

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

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24 (d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment not an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs, Topical.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. Part 510 is amended in § 510.600 by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2), to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Squire Laboratories, Inc., 100 Mill St., Revere, MA 02151	017153
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
017153	Squire Laboratories, Inc., 100 Mill St., Revere, MA 02151.
* * * * *	

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. Part 524 is amended in § 524.1580b by revising paragraph (b), to read as follows:

§ 524.1580b Nitrofurazone ointment.

* * * * *

(b) *Sponsor.* For use in dogs, cats, and horses see Nos. 011519, 000864, 012518, 023851, and 015579 in § 510.600(c) of this chapter. For use in dogs and horses see No. 017135 in § 510.600(c) of this chapter. For use in horses see No. 017153 in § 510.600(c) of this chapter.

* * * * *

Effective date. February 22, 1984.

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

Dated: February 14, 1984.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 84–4590 Filed 2–21–84: 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[T.D. 7944]

Foundation Excise Taxes; Excess Business Holdings of Private Foundations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations dealing with matters reserved in the regulations relating to taxes on the excess business holdings of private foundations. Changes in the applicable tax law were made by the Tax Reform Act of 1969. These regulations provide necessary guidance to the public for compliance with the law and affect private foundations.

DATES: The amendments are generally effective for taxable years beginning after December 31, 1969.

FOR FURTHER INFORMATION CONTACT: Richard J. Wickersham of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20024 (Attention: CC:LR:T) (202–566–3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Proposed regulations under section 4943 were first published in the Federal Register on January 3, 1973 (38 FR 32). Those regulations, except for certain reserved portions, were adopted in T.D. 7496, published on July 6, 1977 (42 FR 34499). A second notice of proposed rulemaking, setting forth new proposed regulations under the portions reserved in T.D. 7496, was published on May 22, 1979 (44 FR 29680). A third notice, modifying the transitional rules proposed in the second notice, was published on August 16, 1979 (44 FR 47958).

The portions reserved in T.D. 7496 related to reorganizations, redemptions and distributions; the definition of a purchase for purposes of the five-year period provided in section 4943(c)(6) to dispose of excess business holdings acquired other than by purchase; the application of the constructive ownership rules in section 4943(d)(1) to corporations engaged in the active conduct of a trade or business and to partnerships; and the conversion of a passive holding into an active business.

A public hearing concerning the reserved portions was held on September 6, 1979. Comments at that hearing were addressed to all three notices of proposed rulemaking. After consideration of all comments regarding the three notices, the reserved portions of regulations under section 4943 are adopted as revised by this Treasury decision.

Excess Business Holdings Generally

Section 4943 generally imposes an excise tax on a private foundation if the foundation and all disqualified persons with respect to the foundation in combination hold more than 20 percent of the voting stock of a business enterprise. If it can be demonstrated that one or more persons unrelated to the foundation have effective control over the business, the 20-percent limit is raised to 35 percent. A foundation must hold directly or indirectly more than two percent of the voting stock or value of a business enterprise before the limitations of section 4943 come into play, however. These limitations on ownership are applicable both to corporations and to non-corporate businesses such as partnerships, estates, and trusts.

Section 4943(c)(4) provides special grandfather rules that allow the 20- or 35-percent ownership limits to be increased, subject to certain conditions, for combined holdings that exceeded the 20- or 35-percent limits on May 26, 1969. Under these grandfather rules, the combined foundation-disqualified person holdings must be reduced, during an initial transition period, to no more than 50 percent, with certain additional reductions required thereafter.

Constructive Ownership

In computing the percentage of stock held by the foundation and disqualified persons, stock held by or for a corporation, partnership, estate or trust is generally deemed to be held by or for the shareholders, partners, or beneficiaries of that entity. The regulations proposed in 1973 exempted from this constructive ownership rule holdings of corporations engaged in an active trade or business. This exception from the general constructive ownership rule ("the myopia rule") did not apply in four situations: (1) If assets used in active trades or businesses are insubstantial when compared with passive assets; (2) if a small active corporation acquires stock in a much larger active corporation; (3) if an active corporation's trade or business assets before an acquisition of assets are insubstantial when compared to its trade or business assets after the acquisition; or (4) if a transaction constitutes a device to acquire or retain excess business holdings.

The myopia rule is adopted in the final regulations with one significant change. This change treats the passive parent of an affiliated group of active businesses as an active business. Under § 53.4943–8(c)(4) and § 53.4943–10(c)(3), consolidated gross income will be used to determine whether the parent of an affiliated group is a business enterprise and the assets of the entire group will be used in determining whether the parent is an active corporation for purposes of the myopia rule. These changes were made because several commentators pointed out that the myopia rule as originally proposed in 1973 would result in different tax treatment of foundations with interests in controlled groups depending solely on how the controlled groups were structured. If the parent corporation were passive, acquisition of stock in unrelated corporations could result in excess business holdings. An identical group structured so that the parent was an active corporation could acquire interests in other corporations without creating any excess business holdings problems. Because the structure of a controlled group is generally dictated by considerations other than the excess business holdings liability of foundation shareholders, the rule has been changed to create identical results irrespective of how the controlled group is structured.

In addition, the cases in which the myopia rule does not apply have been clarified.

Corporate Readjustments and Distributions

Section 4943(c)(4)(A)(iv) provides that the grandfather rules are to be applied to mergers, recapitalizations, or other reorganizations in a manner determined by regulations. Section 53.4943–7 of the final regulations provides these rules. The term "readjustment" has been substituted for "reorganization" to avoid the implication that only transactions meeting the requirements of section 368(a) will qualify for application of the grandfather rules. A readjustment is defined broadly in § 53.4943–7(d)(1) to include mergers, consolidations, recapitalizations, stock or asset acquisitions, asset transfers, other changes in identity, form, or place of organization, redemptions, and distributions of assets or stock, including distributions to which section 301, 302, 331, or 355 applies and distributions of stock of the distributing corporation.

Generally stock received in a corporate readjustment or distribution is treated as the stock surrendered in (or held prior to) the readjustment for purposes of the grandfather rules. However, under § 53.4943–7(b), stock received in a readjustment will not be treated as the stock surrendered to the extent the stock received represents a greater percentage ownership than the highest percentage ownership in any entity held prior to the readjustment. In general, the excess stock will be treated as an interest acquired other than by purchase (see below).

The percentage limits are applied separately to voting percentages and value percentages and are also applied separately to foundation holdings and combined holdings of the foundation and disqualified persons.

Interest Acquired Other Than by Purchase

Under section 4943(c)(6), an interest acquired by a foundation in a business enterprise that would otherwise cause the private foundation to have excess business holdings is treated as held by a disqualified person rather than by the foundation for a five-year period if the interest is acquired "other than by purchase by the private foundation or by a disqualified person." The final regulations do not define the term purchase as did the regulations proposed in 1979, but instead follow the 1973 proposed regulations in detailing some acquisitions that are not purchases for purposes of section 4943. Acquisitions by gift, devise, bequest, legacy or interstate succession are not purchases, as under the 1973 proposed regulations. The final regulations clarify the rules under the 1979 proposed regulations as to when certain acquisitions by estates will be treated as purchases. Because the proposed regulations were unclear, the final regulations are prospective.

Under the 1973 proposed regulations, any increase in holdings resulting from a corporate readjustment would be treated as acquired other than by purchase. However, the 1973 proposed regulations also stated in the constructive ownership rules that exceptions similar to the exceptions to the myopia rule would apply with respect to interests acquired in a readjustment. The final regulations adopt the rule that an increase in holdings resulting from a corporate readjustment will be treated as acquired other than by purchase, subject to exceptions similar to the exceptions to the myopia rule.

Neither the 1973 nor the 1979 proposed regulations contained rules governing reorganizations involving

section 4943(c) (2) or (3) holdings (stock subject to the normal 20% or 35% limits) or (c)(6) holdings (interests acquired other than by purchase). Under the final regulations, § 53.4943–6(d), any increase in holdings as a result of a readjustment will be treated as acquired other than by purchase except to the extent that the increase is attributable to holdings that were excess business holdings before the readjustment, and subject to exceptions similar to the exceptions to the myopia rule. However, any increase in holdings attributable to holdings that would have been excess business holdings except for the fact that such holdings were treated as held by a disqualified person prior to the readjustment will not be treated as held by a disqualified person after the date on which the original holdings would have ceased to be treated as held by a disqualified person.

Acquisitions, Redemptions and Holdings by Entities That Are Disqualified Persons

The final regulations contain two rules covering situations in which a private foundation owns stock in a corporation or other entity that is itself a disqualified person. If the entity is a business enterprise, redemption of stock by the business enterprise will not be treated as a purchase by a disqualified person merely because the redeeming entity is a disqualified person. Although technically a disqualified person *(i.e.,* the business enterprise) is purchasing stock and, as a result, the foundation's holdings are increased, several commentators suggested that the results should be the same in the situation in which a foundation owns stock in a corporation which is a disqualified person and a situation in which a foundation owns stock in a corporation which is not a disqualified person. In addition, in situations where an entity which is a disqualified person holds stock in a business enterprise, the holdings of the disqualified person entity will be treated as held proportionately by its shareholders, partners, or beneficiaries, rather than by the disqualified person entity, to the extent the constructive ownership rules under § 53.4943–8 apply. Thus, for example, if a private foundation has as a substantial contributor a passive holding company, which under section 4946(a)(1)(A) is a disqualified person with respect to the foundation, and the foundation owns 40 percent of the stock of the passive holding company, an acquisition of a 50 percent interest in a business enterprise by the holding company would not create excess business holdings for the foundation because the foundation would be treated as owning 20 percent of the business enterprise under the normal constructive ownership rules and, assuming that no disqualified persons hold stock in the passive holding company, no disqualified persons will be treated as holding stock in the business enterprise. However, where the disqualified person entity is an entity to which the constructive ownership rules do not apply under the myopia rule (*e.g.,* an active business enterprise), or in the case of another private foundation that is a disqualified person by reason of section 4946(a)(1) (H), the holdings of the disqualified person entity will all be treated as held by a disqualified person.

Changes From Passive Holdings to Business Enterprise

The 1973 proposed regulations treated a change from passive holdings to an active business enterprise as an interest in a business enterprise acquired other than by purchase. The 1979 proposed regulations treated such a change as an acquisition other than by purchase only if the private foundation established that the business enterprise was not effectively controlled by the private foundation, its disqualified persons, or both, at the time of the change. The final regulations under § 53.4943–10(d)(2) adopt an intermediate rule under which a change from passive holdings to an active business enterprise is treated as an acquisition by purchase by the private foundation unless the private foundation establishes that it did not effective control the events which caused the change to occur. This control test is different from the test under section 4943(c)(2) in that it allows the foundation to establish control in third parties and disqualified persons. The rule with respect to changes that are treated as occurring by purchase will apply only to change occurring after the publication of the final regulations.

Corporations With More Than One Class of Stock

Under section 4943(c)(4)(A), the combined holdings of the foundation and disqualified persons and foundation holdings separately may not exceed the lowest percentages held on or after May 26, 1969. This provision was intended to permit a foundation that had holdings on May 26, 1969, to retain its holdings (subject to certain limits), but to prevent an increase in the holdings. Because the percentage limitations of section 4943(c)(4) are applied to the percentage of value held as well as the percentage of voting stock held, a change in the relative values of stock of different classes can result in excess business holdings even though the percentages of stock held in each class remains unchanged. This result was not intended. Therefore, a new § 53.4943–4(d)(10) has been added to the final regulations to provide that increases resulting solely from a change in relative values of stock of different classes will not result in excess business holdings.

Drafting Information

The principal author of these regulations is Richard J. Wickersham 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, both on matters of substance and style.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and Office of Management and Budget implementation of the Order dated April 29, 1983.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Trusts and trustees.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 53 is amended as follows:

PART 53—[AMENDED]

Paragraph 1. Section 53.4943–4 is amended by adding a new paragraph (b)(10) to read as follows:

§ 53.4943–4 Present holdings.

* * * * *

(d) *Permitted holdings under section 4943(c)(4).* * * *

(10) *Special rule for changes in the relative values of stock of different classes.*

(i) In the case of a corporation that has more than one class of stock outstanding, if the percentage of value held by the private foundation, its disqualified persons, or both, increases over a period of time solely as a result of

changes in the relative values of the stock of different classes, then the foundation value level, the disqualified person value level, and the substituted combined value level, as defined in paragraph (d)(2) of this section, shall be adjusted to reflect such increase. An increase in the percentage of value held shall not be considered to have occurred solely as a result of changes in the relative values of the stock of different classes if:

(A) There has been any increase during the period in the percentage of any class of stock held by the private foundation, its disqualified persons, or both, or

(B) There has been any issuance, redemption, or purchase by the issuing corporation of any stock during the period.

See § 53.4943–6(d) for rules relating to increases caused by readjustments.

(ii) *Example.* The provisions of this paragraph (b)(10) may be illustrated by the following example:

Example. (i) At all times since May 26, 1969, F, a private foundation, has held 25% (500,000 shares) of the outstanding class of voting stock of X corporation. No disqualified person with respect to F holds any voting stock of X. In addition X has had outstanding since May 26, 1969, a class of non-voting preferred stock, none of which is held by F or a disqualified person. X is an active business corporation and third parties do not have effective control of X. On May 26, 1969, the voting stock (2 million shares outstanding) was trading for $5 a share on the New York Stock Exchange. The non-voting preferred stock, not publicly traded, was valued at $1 million. The total value of all outstanding stock was $11 million ($10 million voting stock plus $1 million non-voting preferred). On May 26, 1969, F held 22.73% of the value of X's outstanding stock ($2.5 million/$11 million).

(ii) On October 31, 1982, X's voting stock is trading for $20 a share and the nonvoting stock is valued at $3 million. At all times during the period May 26, 1969, through October 31, 1982, F has held 25 percent of the voting stock and none of the nonvoting stock of X. No stock of X is owned by disqualified persons. No stock of X has been issued, redeemed or purchased by X during this period. On October 13, 1982, the total value of X's outstanding stock (is $43 million ($40 million voting stock and $3 million nonvoting stock) and F holds 23.26 percent of the value of X's outstanding stock ($10 million/$43 million). F's foundation value level and the substituted combined value level are increased from 22.73 percent to 23.26 percent to reflect this change.

(iii) On November 1, 1982, X corporation distributes the stock of Y corporation, a wholly-owned subsidiary, to X's shareholders. Y is a business enterprise. Under this paragraph (d)(10), all of F's stock in X is permitted holdings under section 4943 (c)(4) even though the percentage of value held by F has increased from 22.73 percent on May 26, 1969, to 23.26 percent on November 1, 1982. F's permitted holdings in Y will be determined by reference to F's permitted holdings in X under § 53.4943–7. Therefore, assuming no prohibited transaction occurs, F's permitted holdings in Y stock equal 25 percent of Y's voting stock and, separately, 23.26 percent of the value of all of Y's outstanding stock.

Par. 2. Section 53.4943–6 is amended by adding new paragraph (a)(2), by revising paragraph (b)(1), by revising paragraph (c)(3), and by adding new paragraphs (c)(4), (d), (e), and (f). The new and revised provisions read as follows:

§ 53.4943–6 Five-year period to dispose of gifts, bequests, etc.

(a) *In general.* * * *

(2) *Acquisitions that are not purchases.* Section 4943(c)(6) does not apply if a change in holdings in a business enterprise is the result of a purchase by the private foundation or a disqualified person. For purposes of subparagraph (a) of this paragraph, the term "purchase" shall not include any acquisition by gift, devise, bequest, legacy, or interstate succession. Paragraph (d) of this section provides rules for the treatment of increases in holdings received in a readjustment (as defined in § 53.4943–7(d)(1)).

* * * * *

(b) *Special rules of for acquisitions by will or trust*—(1) *In general.* In the case of an acquisition of holdings in a business enterprise by a private foundation pursuant to the terms of a will or trust, the five-year period described in section 4943(c)(6) and in this section shall not commece until the date on which the distribution of such holdings from the estate or trust to the foundation occurs. See § 53.4943–5(b)(1) for rules relating to the determination of the date of distribution under the terms of a will or trust. For purposes of this subparagraph, holdings in a business enterprise will not be treated as acquired by a private foundation pursuant to the terms of a will where the holdings in the business enterprise were not held by the decedent. Thus, in the case of after-acquired property, this subparagraph shall not apply, the five-year period described in section 4943(c)(6) and this section shall commence on the date of acquisition of such holdings by the estate, and such five-year period may expire prior to the date of distribution of such holdings from the estate. To the extent that an interest to which section 4943(c)(6) and this paragraph (b)(1) apply is constructively held by a private foundation under section 4943(d)(1) and § 53.4943–8 prior to the date of distribution, it shall be treated as held by a disqualified person prior to such date by reason of section 4943(c)(6). See § 53.4943–8 for rules relating to constructive holdings held in an estate or trust for the benefit of the foundation.

* * * * *

(c) *Exceptions.* * * *

(3) The purchase of holdings by an entity whose holdings are treated as constructively owned by a foundation, its disqualified persons, or both, under section 4943(d)(1) shall be treated as a purchase by a disqualified person if the foundation, its disqualified persons or both have effective control of the entity or otherwise can control the purchase. For example, if a foundation is the beneficiary of a specific bequest of $20,000 and its consent is required for the estate to make a purchase using such cash, then a purchase by the estate using such cash would be treated as a purchase by a disqualified person. Similarly, if an executor of an estate is a disqualified person with respect to a private foundation, any purchase by the estate would be treated as a purchase by a disqualified person.

(4) If a private foundation, its disqualified persons, or both, hold an interest in specific property under the terms of a will or trust, and if the private foundation, its disqualified persons, or both, consent or otherwise agree to the substitution of holdings in a business enterprise for such specific property, such holdings shall be treated as acquired by purchase by a disqualified person. For example, if a private foundation is the beneficiary of a specific bequest of $20,000 and the private foundation agrees to accept certain of the estate's holdings in a business enterprise in satisfaction of such specific bequest, such holdings will be treated as acquired by purchase by a disqualified person even if such holdings were held by the decedent.

(d) *Readjustments and distributions*—(1) *General rule.* Except as otherwise provided in subparagraph (2) of this paragraph, any increase in holdings in a business enterprise that is the result of a readjustment (as defined in § 53.4943–7(d)(1)) shall be treated as acquired other than by purchase. However, holdings that are attributable to holdings owned by the private foundation that would have been excess business holdings except for the fact that such holdings were treated as held by a disqualified person prior to the readjustment shall in no event be treated as held by a disqualified person after the date on which the holdings to which the change is attributable would

have ceased to be treated as held by a disqualified person.

(2) *Exceptions.* Any increase in holdings in a business enterprise that is the result of a readjustment (as defined in § 53.4943–7(d)(1)), including any change resulting from application of the rule in § 53.4943–8(c)(3), shall be treated as occurring by purchase by a disqualified person:

(i) To the extent the increase is attributable to holdings that were excess business holdings prior to the readjustment, and separately

(ii) To the full extent of the increase if the readjustment includes a prohibited transaction, unless the foundation establishes to the satisfaction of the Commissoner that effective control of all parties to the transaction was, at the time of the transaction, in one or more persons (other than the foundation) who are not disqualified persons with respect to the foundation. See§ 53.4943–7(d)(2) for the definition of prohibited transaction.

(3) *Section 4943(c)(6) holdings.* If, immediately prior to a readjustment (as defined in § 53.4943–7(d)(1)), a private foundation has holdings in a business enterprise that are treated under section 4943(c)(6) as held by a disqualified person, then any holdings in a business enterprise that are received in the readjustment in exchange for such section 4943(c)(6) holdings shall be treated as the holdings surrendered in the exchange to the same extent as provided in § 53.4943–7 with respect to exchanges involving holdings to which section 4943(c) (4) or (5) applies. Rules similar to those in § 53.4943–7(a)(2) shall be applied to determine when holdings are treated as surrendered or received in a readjustment for purposes of this paragraph.

(4) *Redemption by a corporation that is a disqualified person.* If a foundation holds an interest in a corporation that is a disqualified person, an increase in the holdings of the private foundation, its disqualified person, or both, as a result of a redemption or a purchase of stock of the disqualified person corporation by such corporation shall not be treated as acquired by purchase by a disqualified person based solely on the status of the corporation as a disqualified person.

(5) *One percent rule for redemptions.* If the holdings of a foundation, its disqualified persons, or both, in a business enterprise are increased as a result of one or more redemptions during any taxable year then, unless the aggregate of such increases equals or exceeds one percent of the outstanding voting stock or one percent of the value of all outstanding shares of all classes of stock, the determination of whether such increases cause the foundation to have excess business holdings shall be made only at the close of the private foundation's taxable year. The five-year period described in section 4943(c)(6) or the 90-day period described in § 53.4943–2(a)(1)(ii), whichever is applicable, shall begin on the last day of such taxable year. If, however, the aggregate of such increases equals or exceeds one percent of the outstanding voting stock or one percent of the value of all outstanding shares of all classes of stock, the determination of whether such increases cause the foundation to have excess business holdings shall be made, and the applicable five-year or 90-day period shall begin, as of the date the increases, in the aggregate, equal or exceed one percent.

(6) *Examples.* The provisions of this paragraph are illustrated in § 53.4943–7(f) and by the following examples:

Example (1). (i) F, a private foundation, holds 20% of the voting stock of X corporation, an active business enterprise. No disqualified person with respect to F holds any X stock. In 1980, X redeems 10% of its outstanding shares, increasing F's holdings to 22% of the X stock. Assume the redemption by X is not a prohibited transaction.

(ii) All of F's holdings before the redemption are permitted holdings under section 4943(c)(2). There is no effective control of X by third parties so the 35% permitted holdings rule is inapplicable. F's holdings after the redemption exceed the permitted holdings under section 4943 (c)(2) (20%). Because the increase is attributable to stock that was permitted holdings prior to the readjustment, and the readjustment does not involve a prohibited transaction, the 2% increase in F's holdings of X stock is treated as acquired other than by purchase. Therefore, under section 4943(c)(6) and this section, F will have 5 years from the date of the redemption to dispose of the 2% excess.

Example (2). (i) Assume the same facts as in *Example (1)* except that the 20% of X stock held by F was donated by X corporation, was worth more than $5,000 and represented 20% of the contributions received by the foundation through the end of the taxable year in which the gift of stock was made.

(ii) X corporation is a disqualified person with respect to F under section 4946(a)(1)(A). Under subparagraph (4), the redemption of X stock is not treated as a purchase by a disqualified person merely because X is a disqualified person with respect to F. Therefore the rules of this paragraph apply as if the redemption were made by a corporation which is not a disqualified person. The analysis and result are the same as in *Example (1).*

Example (3). (i) On May 1, 1990, F, a private foundation, received a donation of 40% of the stock of X corporation, a business enterprise. Neither F nor any disqualified person with respect to F holds any other interest in X. On June 1, 1992, the X corporation redeemed F's 40% interest in exchange for 100% of the stock of Y corporation, a wholly-owned subsidiary of X. Assume the redemption by X is not a prohibited transaction.

(ii) Under section 4943(c)(6), the X stock acquired by gift is treated as held by disqualified persons through April 30, 1995. Under subparagraph (3) of this paragraph (d), 40% of the 100% interest in Y received in exchange for F's 40% interest in X is treated as F's 40% interest in X and is therefore treated as held by disqualified persons through April 30, 1995. In addition, under subparagraph (1) of this paragraph (d), the 60% interest in Y that represents an increase in holdings above the 40% held before the readjustment will be treated as acquired other than by purchase. However, F's 20% interest in X in excess of 20% permitted holdings under 4943(c)(2) would have been excess business holdings if such interest had not been treated as held by as disqualified person on June 1, 1992. Therefore, to the extent of a 30% interest in Y, (*i.e.* , the portion of the increased holdings in *Y* attributable to F's 20% holdings in X) the increased holdings will be treated as held by disqualified person only through April 30, 1995, since this is the latest date on which F's original 40% interest in X would have been treated as held by disqualified persons. The remaining 30% interest in Y will be treated as held by disqualified persons for five years from the date of the exchange (through May 31, 1997).

(e) *Constructive holdings.* Any change in holdings in a business enterprise that occurs because a corporation ceases to be actively engaged in a trade or business, thus causing its holdings to be constructively owned by its shareholders, shall be treated as acquired other than by purchase.

(f) *Certain transactions treated as purchases; cross references.* For the application of section 4943(c)(6) to holdings that were not an interest in a business enterprise when acquired but that subsequently become holdings in a business enterprise, see § 53.4943–10(d)(2).

Par. 3. A new § 53.4943–7 is added to read as follows:

§ 53.4943–7 Special rules for readjustments involving grandfathered holdings.

(a) *General rules*—(1) *Readjustments.* Except to the extent provided in paragraph (b) of this section, if a private foundation, its disqualified persons, or both together have holdings in a corporation to which section 4943(c) (4) or (5) applies, stock of a corporation received by the foundation, its disqualified persons, or both together in a readjustment (as defined in paragraph (d)(1) of this section) in exchange for such holdings to which section 4943 (c) (4) or (5) applies shall be treated, for purposes of section 4943 (c) (4) or (5), as the stock surrendered in the exchange.

(2) *No exchange necessary.* Paragraph (a)(1) of this section shall apply to all readjustments even if no exchange occurs. For purposes of this section, all stock held (directly or indirectly) before a readjustment in any corporation involved in the readjustment shall be treated as stock surrendered in the readjustment and all stock held (directly or indirectly) after the readjustment in any corporation involved in the readjustment shall be treated as stock received in the readjustment in exchange for the stock treated as surrendered.

(b) *Exceptions and limitations*—(1) *Limitation on increases in percentage of voting stock.* (i) If the percentage of voting stock in a business enterprise owned (directly or indirectly) by a private foundation by reason of its ownership of stock received in an exchange described in paragraph (a) of this section exceeds the greatest percentage of voting stock in any business enterprise owned (directly or indirectly) by the private foundation prior to such exchange by reason of its ownership of the stock surrendered by it in the exchange, then—

(A) That portion of the stock received by the private foundation in the exchange which represents such excess is to be treated as an increase in the holdings of the private foundation in accordance with § 53.4943–6 (d), and

(B) Only the remaining portion of the stock received by the private foundation in the exchange shall be treated as the stock surrendered by the private foundation in the exchange.

(ii) If the sum of the percentage of voting stock in a business enterprise owned (directly or indirectly) by disqualified persons by reason of their ownership of stock received in an exchange described in paragraph (a) of this section plus the percentage of voting stock in the business enterprise owned (directly or indirectly) by the private foundation by reason of its ownership of stock received in the exchange and treated as the stock surrendered under paragraph (b) (1) (i) of this section exceeds the greatest percentage of voting stock in any business enterprise owned (directly or indirectly) by the private foundation and its disqualified person in combination by reason of their ownership of the stock surrendered by them in the exchange, then—

(A) That portion of the stock received by the disqualified persons in the exchange which represents such excess is to be treated as an increase in the holdings of the disqualified persons in accordance with § 53.4943–6(d), and

(B) Only the remaining portion of the stock received by the disqualified persons in the exchange is to be treated as the stock surrendered by the disqualified persons in the exchange.

(2) *Limitation on increase in percentage of value.* (i) If the percentage of value of all outstanding shares of all classes of stock in a business enterprise owned (directly or indirectly) by a private foundation by reason of its ownership of stock received in an exhange described in paragraph (a) of this section exceeds the greatest percentage of such value in any business enterprise owned (directly or indirectly) by the private foundation prior to such exchange by reason of its ownership of the stock surrendered by it in the exchange, then—

(A) That portion of the stock received by the private foundation in the exchange which represents such excess is to be treated as an increase in the holdings of the private foundation in accordance with § 53.4943–6(d), and

(B) Only the remaining portion of the stock received by the private foundation in the exchange shall be treated as the stock surrendered by the private foundation in the exchange.

(ii) If the sum of the percentage of value of all outstanding shares of all classes of stock in a business enterprise owned (directly or indirectly) by disqualified persons by reason of their ownership of stock received in an exchange described in paragraph (a) of this section plus the percentage of such value in the business enterprise owned (directly or indirectly) by the private foundation by reason of its ownership of stock received in the exchange and treated as the stock surrendered under paragraph (b)(2)(i) of this section exceeds the greatest percentage of such value in any business enterprise owned (directly or indirectly) by the private foundation and its disqualified persons in combination prior to the exchange by reason of their ownership of the stock surrendered by them in the exchange, then—

(A) That portion of the stock received by the disqualified persons in the exchange which represents such excess is to be treated as an increase in the holdings of the disqualified persons in accordance with § 53.4943–6(d), and

(B) Only the remaining portion of the stock received by the disqualified persons in the exchange is to be treated as the stock surrendered by the disqualified persons in the exchange.

(3) *Increases in percentage of both voting stock and value.* (i) If, as the result of an exchange described in paragraph (a) of this section, a private foundation has excesses determined under both paragraphs (b)(1)(i) and (b)(2)(i) of this section, then—

(A) That portion of the stock received by the private foundation in the exchange that represents the larger excess is to be treated as an increase in the holdings of the private foundation in accordance with § 53.4943–6(d), and

(B) Only the remaining portion of the stock received by the private foundation in the exchange is to be treated as the stock surrendered by the private foundation in the exchange.

(ii) If as the result of an exchange described in paragraph (a) of this section, disqualified persons have excesses determined under both paragraphs (b)(1)(ii) and (b)(2)(ii) of this section, then—

(A) That portion of the stock received by the disqualified persons in the exchange that represents the larger excess is to be treated as an increase in the holdings of the disqualified persons in accordance with § 53.4943–6(d), and

(B) Only the remaining portion of the stock received by disqualified persons in the exchange is to be treated as the stock surrendered by disqualified persons in the exchange.

(4) *Exception for prohibited transactions.* If a readjustment includes a prohibited transaction, as defined in paragraph (d)(2) of this section, then this paragraph shall be applied substituting, for purposes of paragraph (b)(1) and (b)(2), the lowest percentage of voting power or value owned prior to the exchange in any business enterprise involved in the readjustment to which the exchange relates for the greatest percentage of voting power or value in any business enterprise owned by reason of ownership of the stock surrendered in the exchange.

(5) *Voting and value levels.* After an exchange described in paragraph (a) of this section, the private foundation voting and value levels, and the substituted combined voting and value levels (as defined in § 53.4943–4(d)(2)) shall be the lesser of each respective level immediately prior to the exchange with respect to the stock surrendered in the exchange and each such respective level determined immediately after the exchange by taking into account only the stock received in the exchange that is treated under this paragraph as the stock surrendered in the exchange. If the stock of more than one corporation is surrendered in exchange for stock of one corporation, the highest of each voting or value level determined immediately prior to the exchange with respect to the stock of the corporations surrendered in the exchange shall be treated as such level immediately prior to the exchange.

(6) *Determination of phases*—(i) *In general.* Stock received in an exchange

described in paragraph (a) of this section that is treated as stock surrendered in the exchange under this paragraph shall be treated as subject to the same first, second, and third phases that were applicable to the stock surrendered for it. For purposes of determining the applicable phases, stock received in an exchange shall be treated as received in exchange for particular holdings of stock surrendered based on the terms of the exchange. Where only a portion of the stock received is treated as the stock surrendered, such portion of the stock received shall be treated as exchanged for particular holdings of stock surrendered in the same proportions as the total stock received was exchanged for particular holdings of stock surrendered. For example, if 20 shares of X stock owned by a private foundation, subject to a first phase beginning on January 1, 1978 and ending on December 31, 1987, are exchanged for 20 shares of Y stock, and 40 shares of X stock owned by the private foundation, subject to a first phase beginning on June 1, 1980 and ending on May 31, 1990, are exchanged for 40 shares of Y stock, then ⅓ of the Y stock received by the private foundation is treated as received in exchanged for X stock having the January 1, 1978–December 31, 1987 first phase and ⅔ of the Y stock received by the private foundation is treated as received in exchange for the X stock having the June 1, 1980–May 31, 1990 first phase. If only 30 shares of the Y stock received by the private foundation are treated as the stock surrendered, then ⅓ (10 Y shares) will be subject to the January 1, 1978–December 31, 1987 first phase and ⅔ (20 Y shares) will be subject to the June 1, 1980–May 31, 1990 first phase.

(ii) *Transitional rule.* In any case in which holdings subject to section 4943(c)(4) or 4943(c)(5) have been consolidated prior to May 22, 1984, then the longest first phase applicable to any of the holdings surrendered in the consolidation shall be applied to the holdings received by the foundation in the consolidation that are treated as the holdings surrendered in the consolidation. For purposes of this clause, a consolidation is any readjustment that results in a reduction in the number of entities in which the foundation has direct holdings.

(c) *Plan to dispose of excess business holdings.* (1) Notwithstanding § 53.4943–4(d)(i)(4)(D) (relating to restrictions on increases in levels) and paragraphs (a) and (b) of this section, if a readjustment occurs under an approved plan to dispose of stock to which section 4943(c)(4) or (5) applies, in order to meet the requirements of section 4943(c)(4) (*i.e.*, to meet the reduced limits that will be applicable after the first phase holding period described in § 53.4943–4(c)) or to meet the requirements of section 4943(c)(2), all of the stock received in the readjustment shall be treated as held by disqualified persons through the end of the longest first phase holding period applicable to stock surrendered in the readjustment. The foundation and substituted combined voting and value levels shall not be increased on account of the readjustment.

(2) For purposes of this paragraph, a plan is an approved plan only if it is approved by the Commissioner and may be subject to such conditions as the Commissioner determines. A plan must be approved prior to any exchange or distribution pursuant to the plan except for a showing of good cause such as a business emergency.

(d) *Definitions*—(1) *Readjustments.* For purposes of this section, the term "readjustment" includes, but is not limited to—

(i) A merger or consolidation;

(ii) A recapitalization;

(iii) An acquisition of stock or assets;

(iv) A transfer of assets;

(v) A change in identity, form, or place of organization, however effected;

(vi) A redemption;

(vii) A distribution of assets or of stock, including a distribution to which section 301, 302, 331, or 355 applies or a distribution of stock of the distributing corporation.

(2) *Prohibited transaction.* A prohibited transaction is any transaction involving a private foundation that has holdings in a business enterprise which—

(i) Acquires stock (or similar interest in the case of an unincorporated entity) or assets of a business enterprise or redeems its own stock (or similar interest in the case of an unincorporated entity) using cash or other property transferred to the acquiring business enterprise (*e.g.*, as a contribution to capital) by the private foundation, its disqualified persons, or both;

(ii) Acquires stock (or similar interest in the case of an unincorporated entity) or assets of a business enterprise or redeems its own stock (or similar interest in the case of an unincorporated entity) using the proceeds of a loan made to, or guaranteed by, the private foundation, its disqualified persons, or both;

(iii) Acquires 40 percent or more of the voting stock (or similar interest in the case of an unincorporated entity), 40 percent or more of the value of all outstanding shares of all classes of stock (or similar interest in the case of an unincorporated entity), or 40 percent or more of the assets of a business enterprise if the acquiring business enterprise's net assets used in its trade or business prior to such acquisition are insubstantial when compared to the net assets acquired or when compared to the net assets of the business enterprise, the stock (or similar interest in the case of an unincorporated entity) of which was acquired. For this purpose, an insubstantial ratio means a ratio that is 15% or less; or

(iv) Is used as a device to acquire or expand excess business holdings. The determination of whether a business enterprise is used as a device to acquire or expand excess business holdings shall be determined based on all the facts and circumstances. A business enterprise shall be presumed to have been used as a device to acquire or expand excess business holdings if it acquires 40 percent or more of the voting stock (or similar interest in the case of an unincorporated entity), 40 percent or more of the value of all outstanding shares of all classes of stock (or similar interest in the case of an unincorporated entity), or 40 percent or more of the assets of a business enterprise if the consideration for the acquisition consists primarily of nonvoting stock (or similar interest in the case of an unincorporated entity) of the acquiring business enterprise.

(3) *Corporation involved in a readjustment.* A corporation shall be treated as involved in a readjustment if, as part of the readjustment, any stock of the corporation is issued or redeemed, or any stock or assets of the corporation are distributed, exchanged, purchased, sold, acquired, or otherwise transferred.

(e) *Application to unincorporated business enterprise.* The rules of this section shall apply equally to partnerships and other unincorporated business enterprises, applying the rules and substitutions provided in § 53.4943–3(c)(2), (3), and (4).

(f) *Examples.* The provisions of this section and § 53.4943–6(d) are illustrated by the following examples, which assume no prohibited transactions are involved unless otherwise stated:

Example (1). (i) F, a private foundation, has owned 80% of the one outstanding class of stock of X corporation since 1965. The X is subject to section 4943(c)(4) with a first phase ending on May 25, 1984. On January 1, 1982, X merges with Y corporation to form Z corporation. X, Y, and Z are active business corporations. F owns no Y stock. No disqualified person with respect to F owns any stock in Y, Y, or Z. After the merger, F owns 25% of the one outstanding class of Z stock. Third parties do not control Z so that

the 35% permitted holdings rule under section 4943(c)(2) is inapplicable

(ii) F's percentage of voting power and value in Z after the merger (25%) are less than F's percentages of voting power and value in X before the merger (80%). Therefore, under paragraph (a)(1) of this section, all of F's holdings in Z are treated as the X stock surrendered. Therefore, the Z stock is treated as subject to section 4943(c)(4) with a first phase ending on May 25, 1984. Under downward ratchet of paragraph (a)(5) of this section, the foundation voting and value levels and the substituted combined voting and value levels are reduced to 25%.

Example (2). (i) F, a private foundation, owns 100% of the one outstanding class of stock in X corporation and 30% of the one outstanding class of stock in Y corporation. F has held this stock continuously since 1960, and no disqualified person has even owned any stock in X or Y. Under section 4943(c)(4), F's holdings in X are treated as held by disqualified persons through the end of the first phase on May 25, 1989, and F's holdings in Y are permitted holdings during the second phase, which began on May 25, 1989, and F's holdings in Y are permitted holdings during the second phase, which began on May 26, 1979. On January 1, 1985, X and Y consolidate, forming a new corporation Z. In the consolidation, F acquires 50% of the one class of outstanding stock of Z, 40% in exchange for F's 100% interest in X and 10% in exchange for F's 30% interest in Y. Unrelated parties hold the remaining 50% of Z.

(ii) F's percentage of voting power and value in Z after the merger (50%) are less than F's percentages of voting power and value in X before the merger (100%). Thus, under paragraph (a)(1) of this section, the 50% interest in Z held by F is treated as the stock surrendered in the exchange for purposes of section 4943(c)(4). Under paragraph (b)(6) of this section, the 10% interest in Z received for the Y stock is subject to the same second phase period as the surrendered Y stock. The 40% interest first phase period as the surrendered X stock.

Example (3). (i) F, a private foundation, owns 50% of the one class of outstanding stock in X corporation which F has held continuously since 1935. No disqualified person with respect to F owns any stock in X. Neither F nor any disqualified person with respect to F owns any stock in Y corporation. On July 1, 1982, X and Y enter into an agreement to consolidate their businesses in a reorganization to which section 368(a)(1)(A) will apply. As a result of the contemplated consolidation, F will own 60% of the voting stock in Z, the resulting corporation. In addition, parties unrelated to F will own the remaining 40% of the Z voting stock and 100% of a new issue of nonvoting preferred stock in Z. Assume for purposes of this example, that the 60% of the voting stock to be held by F in Z will represent 50% of the fair market value of the outstanding Z stock.

(ii) Under the provisions of paragraph (b)(1) of this section, that portion of the Z stock held by F which represents a percentage of voting power equivalent to that held by F in X immediately prior to the consolidation (i.e., 50%) will be treated as the X stock held by F on May 26, 1969, for purposes of section 4943(c)(4). Therefore, 50% of the Y stock will be treated as subject to a second phase ending on May 25, 1994. The remaining portion of the Z voting stock held by F (10%) is subject to the provisions of § 53.4943–6(d)(1). F will have five years from the date of the merger in which to dispose of 10% of the Z stock without incurring the tax on excess business holdings.

Example (4). (i) F, a private foundation, owns 80% of the one class of outstanding stock in X corporation, an active business corporation. F has held this stock continuously since 1960 and no disqualified person with respect to F owns any stock in X. X has two operating divisions, one which manufacturers shoes and the other which manufactures refrigerators. On January 1, 1978, in a section 351(a) exchange, X transferred all of the assets of its shoe manufacturing division to Y, a corporation which X has formed for this purpose, and receives 100% of the stock of Y so that Y is a wholly-owned subsidiary of X. X then transfers all of the Y stock to F in exchange for all of F's holdings of X stock in a distribution to which section 355 applies.

(ii) Under paragraph (b)(1) of this section, 80% of the Y stock is treated as the X stock surrendered in the exchange for purposes of section 4943(c)(4). The 80% is treated under § 53.4943–4(c) as held by disqualified persons through May 25, 1984, which constitutes the 15-year first phase holding period applicable to the 80% holding in X. The 80% of the Y stock must be reduced to the permitted holdings allowed during the second and third phase as provided by section 4943(c)(4)(D) in the same manner as F's holdings of X stock would have had to have been reduced.

(iii) Under § 53.4943–6(d)(1), the remaining 20% of Y stock is treated as held by a disqualified person for five years from the date of the exchange. F will have five years from the date of the exchange in which to dispose of 20% of the Y stock without incurring the tax on excess business holdings.

Example (5). (i) X corporation, an active business corporation, has outstanding 1,000 shares of one class of stock, of which 600 shares have been held by F1, a private foundation; 100 shares have been held by F2, another private foundation; and 100 shares have been held by D, a disqualified person with respect to both F1 and F2. Unrelated parties hold the remaining 200 shares. F1 and F2 are disqualified persons with respect to each other under section 4946(a)(1)(H). Thus, F1 holds 60% of the X stock (600/1000); F2 and D each hold 10% (100/1000); and the foundation group (F1, F2 and D) holds 80% of X (800/1000). The holdings of F1 and F2 were acquired on January 1, 1980 pursuant to a pre-1969 will and are subject to section 4943(c)(5). There have been no changes in holdings since January 1, 1980.

(ii) On January 1, 1985, pursuant to a plan to dispose of excess business holdings approved by the Commissioner under paragraph (c) of this section, X redeems for cash the 600 shares held by F1. After the redemption, D and F2 each hold 25% of X (100/400). F1 no longer holds any X stocks. The foundation group's holdings (F1, F2 and D) have decreased from 80% to 50% while holdings of unrelated parties have increased from 20% to 50%. At the same time F2's and D's holdings each have increased from 10% to 25%.

(iii) Notwithstanding the increase in F2's and D's holdings, under paragraph (c) of this section, all of the X stock held by F2 will be treated as held by a disqualified person through the end of the first phase (December 31, 1994). However, the foundation voting and value levels do not increase. Therefore, after the end of the first phase, F2's holdings in X may not exceed 10 percent (if the combined holdings of F1, F2 and D exceed the permitted holdings under section 4943(c)(2)).

Example (6). (i) X corporation, an active business corporation, has outstanding 1,000 shares of its one class of stock. Since 1960, 100 shares (10%) have been held by F, a private foundation and 350 shares (35%) have been held by D, a disqualified person with respect to F. All of the stock held by F is permitted holdings under section 4943(c)(4) and the substituted combined voting and value levels are 45% (10% + 35%). Because of disagreements concerning management of X between D and A, an unrelated party who holds 300 shares (30%) of the X stock, X redeems all of A's shares on December 1, 1981.

(ii) After the redemption, F holds 14.3% (100/700) of the X stock and D holds 50% (350/700), for combined holdings of 64.3%. Because the combined holdings exceed the substituted combined voting level (45%) by more than F's entire holdings, all of the F stock is excess business holdings. However, all of F's stock will be treated as acquired other than by purchase under § 53.4943–6(d)(1) and therefore will be treated under section 4943(c)(6) and this section, as held by a disqualified person for five years from the date of the redemption (through November 30, 1986). If the combined holdings of F and its disqualified person are reduced to 45 percent by the end of the five year period, F may retain a portion of its holdings in X (limited to no more than the foundation voting and value level of 10 percent).

Example (7). Assume the same facts as in *Example (6)*, except that D loaned the money to X that was used to redeem A's shares. Under these facts, the increased holdings result from a prohibited transaction described in paragraph (d)(2) of this section. Therefore, all of F's stock will be treated as acquired by purchase by a disqualified person under § 53.4943–6(d)(2). F will have 90 days after the redemption in which to dispose of its holdings or to reduce its holdings and the combined holdings to the levels held prior to the redemption as discussed in *Example (6)*.

Example (8). (i) F, a private foundation, has held 100% of the outstanding stock of X corporation since 1960. F also holds 15% of the voting stock of Y corporation. Both X and Y are active business corporations. X has $1 million in net assets used in its trade or business and Y has $6.7 million used in its trade or business. On June 1, 1985, Y is merged into X. After the merger F holds 25% of the voting stock of X. No person other than F controls X after the merger

(ii) Because more than 40% of Y was acquired and the net assets of X, the acquiring corporation, used in its trade or business prior to the merger represent less than 15% of the net assets of Y used in its trade or business, the merger is a prohibited transaction described in paragraph (d)(2)(iii). Therefore, only 15% of the stock X is treated, pursuant to paragraph (b), as the stock held by F prior to the redemption. F's holding of 5% (the excess of F's 25% holdings over the 20% permitted holdings in X (determined under section 4943(c)(2)) are treated as purchased by a disqualified person pursuant to § 53.4943–6(d)(2). F will have 90 days after June 1, 1985, in which to dispose of the 5% excess holdings.

Par. 4. Section 53.4943–8 is amended by adding new paragraphs (a) (3), (4) and (5), (c), (d), and (e) to read as follows:

§ 53.4943–8 Business holdings; constructive ownership.

(a) *Constructive ownership.* * * *

(3) *Determination of extent of constructive ownership.* If an interest in a business enterprise owned by a corporation is constructively owned by a shareholder, each shareholder's proportion of ownership is generally computed on the basis of the voting stock each shareholder has in the corporation. In determining holdings permitted under section 4943(c) (4) and (5), each shareholder's proportion of ownership in the business enterprise shall also be computed on the basis of value, taking into account both voting and nonvoting stock held by the shareholder.

(4) *Nonvoting stock.* If a private foundation, its disqualified persons, or both, own (directly or constructively) nonvoting stock of a parent corporation, the holdings of which are treated as constructively owned by its shareholders by reason of section 4943(d)(1) and this section, such nonvoting stock shall be treated as nonvoting stock of any corporation in which the parent corporation holds an interest for purposes of the limitation on the holding of nonvoting stock under section 4943(c)(2)(A) and § 53.4943–3(b)(2).

(5) *Interests held by certain disqualified persons.* IIn the case of an entity that is a disqualified person (other than an entity described in section 4946(a)(1)(H)), the holdings of which are treated as constructively owned by its shareholders, partners, or beneficiaries, for purposes of determining the total holdings of disqualified persons the holdings of the entity shall be considered held by a disqualified person only to the extent such holdings are treated as constructively owned by disqualified persons who are shareholders, partners, or beneficiaries of the entity. In the case of an entity described in section 4946(a)(1)(H) or an entity, the holdings of which are not treated as constructively owned by its shareholders, partners, or beneficiaries, all holdings of such entity shall be treated as held by a disqualified person if and only if the entity itself is a disqualified person.

* * * * *

(c) *Corporation actively engaged in a trade or business*—(1) *In general.* Except as provided in paragraphs (c)(2) and (3) of this section, any interest (whether or not in a separate entity) owned by a corporation which is actively engaged in a trade or business shall not be deemed to be constructively owned by such corporation's shareholders.

(2) *Actively engaged in a trade or business.* For purposes of paragraph (c)(1) of this section—

(i) A corporation shall not be considerd to be actively engaged in a trade or business if the corporation is not a business enterprise by reason of section 4943(d)(3) (A) or (B) and § 53.4943–10 (b) or (c);

(ii) In the case of a corporation which owns passive holdings and is actively engaged in a trade or business, such corporation shall not be considered to be actively engaged in a trade or business if the net assets used in such trade or business are insubstantial when compared to passive holdings.

(3) *Exceptions.* If a corporation has been involved in a prohibited transaction, any interest in a business enterprise owned by such corporation shall be treated as constructively owned by its shareholders, whether or not such corporation is actively engaged in a trade or business. For a definition of prohibited transaction, see § 53.4943–7(d)(2).

(4) *Affiliated group.* In applying this paragraph to the common parent in an affiliated group (as defined in § 53.4943–10 (c)(3)(ii)), the assets and activities of the affiliated group shall be treated as the assets and activities of the common parent.

(d) *Partnerships.* Any interest in a business enterprise which is owned by a partnership shall be deemed to be constructively owned by the partners in such partnerships.

(e) *Examples.* The provisions of this section are illustrated by the following examples.

Example (1). F, a private foundation, directly owns voting stock of X, a holding company described in section 4943(d)(3)(B). That stock represents 40% of the voting power in X and 20% of the value of all outstanding shares of all classes of stock in X. F also owns nonvoting stock in X that represents 10% of the value of all outstanding shares of all classes of stock in X. D, a disqualified person, owns voting stock of X that represents 40% of the voting power in X and 20% of the value. D does not own any nonvoting stock in X. X corporation's only holding is stock of Y corporation. The Y voting stock held by X represents 50% of the voting power in Y and 25% of the value of all outstanding shares of all classes of stock in Y. X also owns nonvoting stock in Y that represents 25% of the value of all outstanding shares of all classes of stock in Y. Under paragraph (a)(3) of this section, F and D each constructively owns 20% of the voting power in Y through their voting interest in X (40% of X's 50% of Y). F also constructively owns 15% of the value of all outstanding shares of all classes of stock in Y through F's interest in X (F's 30% of the value of X multiplied by X's 50% of the value of Y), while D constructively owns 10% of the value of Y (D's 20% of the value of X multiplied by X's 50% of the value of Y).

Example (2). (i) F, a private foundation, owns 50% of the one class of nonvoting stock of X corporation, a corporation described in section 4943(d)(3)(B) and paragraph (c)(2)(i) above. D, a disqualified person with respect to F as described in section 4946(a)(1)(A), owns 40% of the one class of voting stock of X. X corporation is a disqualified person with respect to F because D owns more than 35% of the voting of X. (See section 4946(a)(1)(E)). On January 1, 1980, X purchases for cash 40% of the only class of stock of Y corporation, a retail clothing store, from unrelated third parties.

(ii) Under paragraph (a)(4) of this section, F is treated as owning nonvoting stock of Y. Although X is a disqualified person, its holdings are not treated as held by disqualified persons except as constructive holdings. Therefore, the "deemed" nonvoting stock in Y is a permitted holding because D, a disqualified person with respect to F, constructively owns only 16% of the voting stock of Y (less than 20% permitted under section 4943(c)(2)).

Example (3). (i) The facts are the same as in *Example (2),* except that X purchases 100% of this stock of Y corporation. Under paragraph (a)(4) of this section, F is treated as owning nonvoting stock of Y. The "deemed" nonvoting stock in Y is not a permitted holdings because D, a disqualified person with respect to F, constructively owns 40% of the voting stock of Y.

Example (4). (i) D, a disqualified person with respect to F, owns 40% of the one class of stock in X corporation, an active business. X is a disqualified person with respect to F. X acquires 40% of the voting stock in Y corporation. Under paragraph (a)(5) of this section, the holdings of X in Y are treated as held by a disqualified person. F cannot hold any Y stock, voting or nonvoting.

Par. 5. Section 53.4943–10 is amended by adding new paragraphs (c)(3) and (d)(2) to read as follows:

§ 53.4943–10 Business enterprise; definition.

* * * * *

(c) *Income derived from passive sources.* * * *

(3) *Affiliated group.* (i) For a common parent corporation in an affiliated group, substitute "consolidated gross income" in subparagraph (1) of this paragraph.

(ii) For purposes of this section, the term "affiliated group" shall have the same meaning as in section 1504(a), without regard to section 1504 (b) through (e).

(iii) Section 53.4943–11(d) provides a transitional rule for certain parent corporations.

(d) *Application of section 4943(c)(6).* * * *

(2) *Passive holdings, etc.* (i) Except as provided in subdivision (ii), if a private foundation holds an interest that is not an interest in a business enterprise, and the interest later becomes an interest in a business enterprise (other than by reason of a readjustment as defined in § 53.4943–7(d)(1)), the interest will be treated as having been acquired by purchase by a disqualified person at the time the interest becomes an interest in a business enterprise. The treatment of an interest that becomes an interest in a business enterprise by reason of a readjustment shall be determined under § 53.4943–6 and § 53.4943–7.

(ii) If a private foundation establishes that the events which caused an interest not originally a business enterprise to become a business enterprise were not effectively controlled by the private foundation, then such interest shall be treated as acquired other than by purchase from the time of the change for purposes of section 4943(c)(6).

(iii) See § 53.4943–3(b)(3)(ii) for the definition of effective control.

* * * * *

Par. 6. Section 53.4943–11 is amended by adding new paragraphs (c), (d) and (e) to read as follows:

§ 53.4943–11 Effective date.

* * * * *

(c) *Special transitional rule for acquisition by will, etc.* (i) The rule in § 53.4943–6(b)(1) whereby holdings not held by a decedent are not treated as acquired under a will shall not apply to acquisitions of after-acquired property of a decedent's estate occurring on or before May 22, 1984.

(ii) The rule in § 53.4943–6(b)(1) treating a purchase by an estate as a purchase by a disqualified person where the executor is a disqualified person shall not apply to purchases occurring on or before May 22, 1984.

(d) *Special transitional rule for affiliated groups.* If on or before May 22, 1984 a foundation holds an interest in a common parent corporation in an affiliated group, as defined in § 53.4943–10(c)(3)(ii), the foundation may elect to have both § 53.4943–8(c)(4) and § 53.4943–10(c)(3) not apply to such common parent corporation. No election may be made to have only one section not apply. Such election shall be made by the governing body of the private foundation at any time prior to February 22, 1985.

(e) *Special transitional rule for changes to a business enterprise.* Any interest that is not an interest in a business enterprise which becomes an interest in a business enterprise under § 53.4943–10(d)(2) prior to May 22, 1984 will be treated as having been acquired other than by purchase for purposes of section 4943(c)(6).

This Treasury decision is issued under the authority contained in sections 4943(c)(4)(A) and 7805 of the Internal Revenue Code of 1954 (83 Stat. 507, 68A Stat. 917; 26 U.S.C. 4943(c)(4)(A)(iv) and 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: February 6, 1984.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 84–4697 Filed 2–21–84; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No 1047–84]

Delegation of Authority to Deputize Marshals

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This Order delegates the Attorney General's authority to specially deputize persons as Special Deputy U.S. Marshals to the Associate Attorney General.

EFFECTIVE DATE: February 13, 1984.

FOR FURTHER INFORMATION CONTACT: D. Lowell Jensen, Associate Attorney General, Department of Justice, Room 4119, 10th & Constitution Avenue NW., Washington, D.C. 20530 (633–3752)..

SUPPLEMENTARY INFORMATION: This Order expressly provides a delegation of authority for the Associate Attorney General to exercise the authorities vested in the Attorney General by law to authorize the special deputation of persons as Deputy U.S. Marshals when appropriate. The existing independent delegation of authority to the Director of the United States Marshals Service is also continued but is modified.

This Order is not a rule within the meaning of either Executive Order 12291, Section 1(a) or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

The index term for Part 0 of Title 28 of the Code of Federal Regulations is as follows:

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies).

PART 0—[AMENDED]

By virtue of the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 562 and 5 U.S.C. 301, Part 0 of Title 28 of the Code of Federal Regulations is hereby amended as follows:

1. Section 0.19 is amended by adding a paragraph (a) (3) to read as follows:

§ 0.19 [Amended]

(a) * * *

(3) Exercise the power and authority vested in the Attorney General to authorize the Director of the United States Marshals Service to deputize persons to perform the functions of a Deputy United States Marshall.

* * * * *

2. Section 0.112 is revised to read as follows:

§ 0.112 Special deputation.

The Director, United States Marshals Service, is authorized to deputize the following persons to perform the functions of a Deputy U.S. Marshal in any district designated by the Director:

(1) selected officers or employees of the Department of Justice;

(2) selected federal, state, or local law enforcement officers whenever the law enforcement needs of the United States Marshals Service so require;

(3) selected employees of private security companies in providing courtroom security for the Federal judiciary;

(4) other persons designated by the Associate Attorney General pursuant to 28 CFR 0.19(a)(3).

All such deputations shall expire on a date certain which shall be stated on the face of the deputation.

Dated: February 13, 1984.

William French Smith,

Attorney General.

[FR Doc. 84–4656 Filed 2–21–84; 8:45 am]

BILLING CODE 4410–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning March 1, 1984. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after March 1, 1984, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Renae R. Hubbard, Special Counsel, Legal Department, Code 250, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202–254–6476 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On January 28, 1981, the Pension Benefit Guaranty Corporation ("PBGC") published a final regulation on Valuation of Plan Benefits in Non-multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1983), set forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1983 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods beginning September 2, 1974 through June 1, 1983. The rates and factors adopted for valuing benefits in plans that terminated on or after June 1, 1983 remained in effect until September 1, 1983. On August 15, 1983, the PBGC published new rates and factors for plans that terminated on or after September 1, 1983 (48 FR 36817). That rate remained in effect for plan terminations through the end of January, 1984. On January 16, 1984, the PBGC published new rates and factors for plans terminating on or after February 1, 1984 (49 FR 1896). At this time, changes in the financial and annuity markets require a decrease in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for plans that terminate on or after March 1, 1984. This interest rate and these factors will remain in effect until such time as PBGC publishes another amendment concerning the rates.

Generally, the rates will be in effect for at least one month. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after March 1, 1984, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 reads as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, and 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029 (1974), as amended by Secs. 403(1), 403(d), and 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, and 1299 (1980) (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 44 of Appendix B is revised and Rate Set 45 of Appendix B is added to read as follows:

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date—		Immediate annuity rate	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
•	•	•	•	•	•	•	•	•
44	2-1-84	3-1-84	9.75	1.0900	1.0775	1.0400	7	8
45	3-1-84	.....	9.50	1.0875	1.0750	1.0400	7	8

David M. Walker,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-4626 Filed 2-21-84; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Extension of Deadline for Satisfaction of Conditions of Approval of the Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the Secretary of the Interior's decision to extend the deadline for Illinois to meet two conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The conditions concern sediment ponds and covering coal seams with water.

EFFECTIVE DATE: February 22, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Field Office Director, Office of Surface Mining, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982 (47 FR 23858). Information pertinent to the general background, revisions, modifications and amendments to the proposed program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982 **Federal Register**.

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Illinois agreed to satisfy conditions (a), (d) and (e) by December 1, 1982 and conditions (b) and (c) by June 1, 1983. Conditions (a), (d) and (e) have been removed (48 FR 23412, May 25, 1983, and 48 FR 51619, November 10, 1983). On May 23, 1983, Illinois requested a six-month extension of the June 1, 1983 deadline to satisfy conditions (b) and (c). On August 19, 1983, OSM announced the decision to extend the deadline to December 1, 1983 (48 FR 37625).

Condition (b) stipulates that Illinois must amend its program to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water, and that pending completion of the above, Illinois may not use its authority to approve covering with less than 10 meters of water or the approval will terminate. Condition (c) stipulates that Illinois must amend its program to demonstrate that Illinois understands that at the present time the best technology currently available for sediment control is sedimentation ponds and should Illinois wish to approve any other technology, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above Illinois may not use its authority to approve siltation structures other than sedimentation ponds or the approval will terminate.

Request to Extend Deadline

On December 1, 1983, Illinois requested a further extension of the deadline for satisfying conditions (b) and (c), until June 1, 1984. In its request, the State pointed to certain developments in the litigation on the approval of the Illinois program. The State noted that the United States District Court for the Central District of Illinois had granted, on November 30, 1983, the Secretary's motion to remand the *Illinois South Project* v. *Watt* (Civ. No. 82–2229) case to the Secretary for review in light of legal developments that have occurred since the approval date. Conditions (b) and (c) concern subjects that are directly at issue in the litigation and which may be affected by the Secretary's review on remand. The litigation and remand are the subject of a separate **Federal Register** notice (48 FR 55580, December 14, 1983). In order to avoid rulemaking proceedings which may prove to be unnecessary, the State requested a six-month extension of the December 1, 1983 deadline. Illinois stated that in the interim it would continue to enforce the relevant regulations in accordance with the Federal regulations.

In accordance with the State's request, on December 19, 1983, OSM published a notice in the **Federal Register** (48 FR 56089) proposing that the deadline for the State to meet these conditions be extended until June 1, 1984. Comment was solicited for 30 days ending January 18, 1984.

Public Comment

1. The Illinois South Project (ISP) raised several objections to the proposed extension. ISP stated that neither of the conditions is directly affected by the Secretary's review on remand. In support of this contention, ISP noted that condition (b) concerns how much water may be placed over a coal seam, while the issue in litigation is whether *any* water may be placed over the coal seam. ISP also stated that condition (c) is not related to the issue in litigation concerning design criteria for sedimentation ponds, but rather that it concerns agreement that sedimentation ponds are the best technology currently available for sediment control. OSM agrees that the issues involved in conditions (b) and (c) are not identical to the issues raised in litigation. However, the conditions do concern subject areas that are directly at issue in the litigation. Further, the Secretary's review of these issues may affect the extent to which Illinois is required to amend its regulations.

2. ISP stated that delaying the deadline for the conditions until after the Secretary's review on remand does not avoid unnecessary rulemaking proceedings as alleged by the State, because the issues covered by the conditions differ from the issues involved in the litigation. However, as noted above, the same subject matter is involved, and as a result of the Secretary's decision, Illinois may be required to make additional changes to its regulations in these subject areas.

3. ISP objected that an extension until June 1, 1984 is too long, because the Secretary's decision on remand is due by March 29, 1984, and the State need only finalize the rules it has already proposed. As noted above under comment 2, Illinois may be required to engage in different or additional rulemaking as a result of the Secretary's decision. If no additional rulemaking is necessary, the Secretary does not believe that it is unreasonable to allow the State an additional 63 days beyond March 29 to finalize its rules and submit them to OSM. At this time, it would be premature to predict what, if any, effect the Secretary's decision will have.

4. ISP objected that the Secretary cannot extend the deadline because there is no indication that the State is actively proceeding with steps to correct the deficiencies as required by 30 CFR 732.13(j)(2). However, as ISP itself notes, the State proposed the required changes in the Illinois Register on March 11, 1983, and subsequently reopened the comment period until September 2, 1983. The State requested an extension of time after learning of the court order remanding the Illinois litigation to the Secretary. The Secretary believes that the State's rulemaking actions, coupled with its request for a relatively short-term extension, constitutes actively proceeding with steps to correct the deficiencies.

Secretary's Decision

After considering the State's request, the circumstances surrounding the request, and the public comments received, the Secretary has determined that an extension of the deadline for Illinois to satisfy conditions (b) and (c) is warranted. Illinois has agreed to continue to enforce its regulations in accordance with the Federal regulations until such time as the conditions are removed.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

PART 913—ILLINOIS

§ 913.11 [Amended]

1. Section 913.11 is amended in paragraphs (b) and (c) by substituting "June 1, 1984" for "December 1, 1983" each time it appears.

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 913 of Title 30 is amended as set forth herein.

Dated: February 15, 1984.

Leona A. Power,

Acting Assistant Secretary for Lands and Minerals Management.

[FR Doc. 84–4692 Filed 2–21–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS YORKTOWN (CG 48) is a vessel of the Navy which, due to its special construction and purpose, cannot comply with 72 COLREGS, Annex I, Section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship; 72 COLREGS, Annex I, Section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 27, 1984.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment to Part 706 provides notice that the Secretary of the Navy has certified that USS YORKTOWN (CG 48) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, Section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship; 72 COLREGS, Annex I, Section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * * * *

TABLE 5

Vessel	Number	Forward masthead light not required; height above hull. Annex I, section 2(a), (i), (ii), (c), (d)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, section 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, section 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, section 2(a)(i)	Aft masthead lights not visible over forward light 1000 meters ahead of ship in all normal degrees of trim. Annex I, section 2(b)	Forward masthead light not in forward quarter of ship. Annex I, section 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light, Annex I, section 3(a).	Percentage horizontal separation attained
USS YORKTOWN	CG 48						X	X	38.0

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: January 27, 1984.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 84-4627 Filed 2-21-84; 8:45 am]

BILLING CODE 3810-AE-M

Department of the Air Force

32 CFR Part 821

Mission and Functions of the USAF Air Demonstration Squadron

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 821—Mission and functions of the USAF Air Demonstration Squadron, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 20-25, has been determined to be for internal guidance only and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: February 23, 1984.

FOR FURTHER INFORMATION CONTACT: SMSgt McMullen, HQ USAF/XOOOF, Washington, D.C., 20330, telephone (202) 695-4509.

SUPPLEMENTARY INFORMATION: Accordingly, 32 CFR is amended by removing Part 821.

List of Subjects in 32 CFR Part 821

Airman, Aircraft.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-4611 Filed 2-21-84; 8:45 am]

BILLING CODE 3910-01-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM83-4; Order No. 549]

Order of the Commission Amending Rules of Practice and Procedure

February 15, 1984.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Postal Rate Commission amends its rules of practice to allow the Commission to conduct informal investigations when a complaint is filed by a person who believes he or she is not receiving postal service in accordance with the policies of the Postal Reorganization Act and to delete language prohibiting administrative law judges (ALJs) from performing Commission duties inconsistent with their ALJ responsibilities. The first change allows the Commission to use informal investigative procedures in a service complaint, thereby postponing the filing of the Postal Service's formal answer. The Commission believes this option will add flexibility to a rule that experience has shown is unnecessarily rigid and will save time and litigation costs. The second change deletes language that is no longer meaningful in light of the Commission's practice of hearing cases en banc, without the services of an administrative law judge. The Commission believes this will remove any confusion that might arise regarding the ability of a Commissioner who serves as Presiding Officer to perform other functions which may be required by his or her position as a Commissioner.

EFFECTIVE DATE: February 22, 1984.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 2000 L Street, N.W., Suite 500, Washington, D.C. 20268 (telephone: 202/254-3824).

SUPPLEMENTARY INFORMATION: On December 29, 1982, the Commission issued a notice of proposed rulemaking that identified and discussed in detail two proposed changes in the rules of practice (39 CFR Part 3001). One change would alter the Commission's procedure for handling complaints filed under 39 U.S.C. 3662 by persons who believe the United States Postal Service is rendering service not consistent with the policies of title 39, U.S. Code. The other change would delete a prohibition against administrative law judges performing duties inconsistent with their status as an independent hearing officer in Commission proceedings.

As explained in the Notice of Proposed Rulemaking, the first change would give the Commission the option of conducting informal investigations of issues raised in a service complaint, thereby postponing the filing of an answer by the Postal Service. The Commission believes that experience under the existing rule, which automatically triggers a formal adversarial process, indicates that the informal preliminary investigation option would be beneficial because many service complaints are likely to be resolved more efficiently and effectively in a nonadversarial procedure. The second change would eliminate a prohibition that is meaningless because the Commission no longer employs administrative law judges as hearing officers in its proceedings. Instead, the Commission sits en banc and the Chairman appoints one Commissioner to serve as Presiding Officer. Deleting this prohibition would conform the Commission's rules to current practice and prevent any confusion over the ability of a Commissioner who serves as a Presiding Officer to perform other functions required by his or her position as a Commissioner.

Comments on the Proposed Changes

The only response to the Commission's invitation for comments on the proposed changes was filed by the Postal Service, which generally supported the informal investigation option, but thought there was some ambiguity concerning the deadline for filing answers to complaints. The Service suggested alternative language specifying that Postal Service answers to complaints not be due until thirty days after the Commission issues an order requesting an answer. The Service did not comment on the Commission's proposal to delete language referring to administrative law judges.

Changes in the Complaint Rules

In light of the fact that proposed section 3001.85(a) provides that the Commission will give notice of whether or not it intends to use informal procedure, and, in either case, will grant the Postal Service additional time to answer the complaint if circumstances render the usual thirty-day deadline inappropriate, we believe the Service's suggestion is unnecessarily rigid. In some circumstances, it might unduly delay resolution of the issues raised in the complaint; in other cases, it might not provide sufficient time for the Service to prepare an adequate answer. Given that the Commission's proposal addresses filing deadlines beyond the standard thirty-day period (and in no circumstance ever requires that an answer be filed less than thirty days after filing of a complaint), we believe that granting additional time "as just and appropriate" is the better approach. Unlike the Service's proposal, this standard allows time periods for responses to be tailored to specific complaint cases. In many instances, we believe this flexibility will allow issues to be resolved more efficiently and expeditiously than they would be under the Service's proposal. Accordingly, we have determined to amend § 3001.84 and § 3001.85 in the manner described in the Notice of Proposed Rulemaking and set out below.

In addition, we must bear in mind that § 3001.84 must be drafted as to cover both service and rate complaints. For reasons suggested in the notice in this docket (48 FR 482), the present amendments do not apply to rate complaints. The Postal Service's suggested rewriting of § 3001.85(a) would make it applicable to rate matters, but its comment does not discuss that change. Given our decision to limit the amendment to the types of cases in which we think it would be useful, we believe that our original revisions of § 3001.84 is superior.

Amendment of § 3001.23(c). As discussed in detail in the Notice of Proposed Rulemaking, the first sentence of § 3001.23(c) of the rules of practice [39 CFR 3001.23(c)] incorporates a mandate that administrative law judges employed by the Commission are not to perform duties inconsistent with their responsibilities as hearing officers in Commission proceeding. The Commission has determined to delete this sentence because it no longer employs administrative law judges and because retaining this language in the rules of practice might cause confusion regarding the ability of a Commissioner to perform other functions while he is serving as Presiding Officer in a Commission proceeding. In light of this change, the subtitle of the section is changed from "Limitations" to "Ex parte communications" because the Commission believes the latter title provides a better description of the part of § 3001.23(c) that remains after deletion of the first sentence.

Impact of Changes

Pursuant to Executive Order 12291, the Commission finds that the rule changes do not constitute a "major rule." The changes deal with procedural matters and it is not anticipated that they could result in an appreciable change in the costs of participating in these cases, nor that they will have an adverse effect on competition, employment or the other factors listed in E.O. 12291. The conclusion that the rule changes do not constitute a major rule for purposes of E.O. 12291 applies to the Regulatory Flexibility Act as well.

The preceding impact analysis and a request for comments regarding it was inadvertently omitted from the Notice of Proposed Rulemaking. The Commission concludes that the omission was without prejudice to interested parties.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure.

PART 3001—RULES OF PRACTICE AND PROCEDURE

For the reasons set out above, the Commission amends §§ 3001.23(c) and 3001.84 and 3001.85 of the rules of practice [39 CFR 3001.23(c), 3001.84, 3001.85], as follows:

§ 3001.23 [Amended]

1. In § 3001.23(c), change the title from *"Limitation."* to *"Ex parte communication."* and remove the first sentence in its entirety.

2. Revise § 3001.84 introductory text to read as follows:

§ 3001.84 Answers by the Postal Service.

Within 30 days after the filing of a complaint with the Commission (unless more time is allowed under § 3001.85(a)), the Postal Service shall file and serve an answer. Such answer shall be in the form and manner required by §§ 3001.9 to 3001.12, and shall include the following:

* * * * *

3. Redesignate present § 3001.85 as paragraph (b), and add before it a new paragraph (a), as follows:

§ 3001.85 Informal procedures.

(a) In case of a complaint alleging service not in accordance with the policies of the Act, the Commission, acting through such appropriate Commission employees as the Chairman shall designate, may use correspondence, conferences, or other appropriate informal inquiry methods to define the issues, further the exchange of information and explanations between the Postal Service and the complainant, and facilitate negotiated settlement. On receiving a service complaint, the Commission will give a notice of whether or not it intends to use informal procedures. In either case, it will give the Postal Service such additional time to answer the complaint as is just and appropriate. After expeditiously conducting informal inquiries, it will issue an order summarizing the results. All correspondence and other documents issued by or lodged with the Commission during informal inquiries will be part of the public record of the case.

[39 U.S.C. 3603, 3624, and 3662]

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 84-4657 Filed 2-21-84; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2529-8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: USEPA announces final rulemaking on a revision to the Illinois

State Implementation Plan (SIP) for ozone. The SIP revision will provide an alternative compliance schedule for the Del Monte Corporation (Del Monte) facility located in Ogle County, Illinois. This SIP will allow Del Monte additional time to comply with the Volatile Organic Compound (VOC) emission limitations for its sheet basecoat, overvarnish, and end sealing compound can coating operations. USEPA's action is based upon a proposed revision which was submitted by the State.

This action will be effective April 23, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

DATE: This action is effective April 23, 1984.

ADDRESSES: Copies of this revision to the Illinois SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan at (312) 353–0396 before visiting the Region V Office).

U.S. Environmental Protection Agency Air and Radiation Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

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

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch (5AP–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 353–0396.

SUPPLEMENTARY INFORMATION: On August 15, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for Del Monte's Can Manufacturing Plant No. 115 located in Rochelle, Ogle County, Illinois. This proposed revision is in the form of a May 19, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB 82–147). It grants a variance from the existing SIP requirements until December 31, 1984, and provides a legally enforceable compliance schedule.

USEPA's policy on approving compliance schedule extensions for controlling VOC emissions from certain can manufacturing processes was published in the March 10, 1982, **Federal Register** (47 FR 10293). The policy states that such extensions will be approved for sheet base coat and end sealing compound processes in circumstances where the extension will facilitate the expeditious conversion to low solvent technology. It is USEPA's policy that such extensions may be granted until 1985.

Under the federally approved Illinois SIP, the sheet basecoat and overvarnish coating operations and end sealing coating operations are subject to the emission control requirements contained in Rule 205(n)(1)(B)(i) and Rule 205(n)(1)(B)(vi) respectively. Rule 205(n)(1)(B)(i) requires that basecoat and overvarnish coating process VOC emissions do not exceed 2.8 pounds per gallon (lbs/gal) and Rule 205(n)(1)(B)(vi) requires that end sealing compound coating process VOC emissions do not exceed 3.7 lbs/gal. Final compliance is required by December 31, 1982.

In lieu of the compliance date contained in the existing federally approved SIP, the State is proposing an alternative schedule. The variance contains a legally enforceable compliance program whereby Del Monte will achieve final compliance with Rule 205(n)(1)(B) by December 31, 1984, utilizing a combination of the following measures:

(1) Conversion of the sheet base coatings to coating with lower VOC content;

(2) Replacement of end sealing compounds with high-solids compounds; and

(3) Replacement of one of the sheet base coatings with an ultraviolet cured coating containing no VOC.

No later than June 19, 1983, and every third month thereafter, Del Monte is required to submit written reports to IEPA detailing all progress made in achieving compliance with Rule 205(n)(1)(B). These reports will include the quantity and the VOC content of all coatings employed during the reporting period, a description of the status of the reformulation program, and any other information which may reasonably be requested by IEPA and USEPA.

Del Monte states that it has worked closely with coating suppliers to achieve some VOC reductions. It is continuing to perform evaluation tests and is working closely with other members of the can manufacturing industry.

USEPA has determined that this variance is consistent with the March 10, 1982, compliance extension policy, and that the extension will not jeopardize maintenance of the ozone national ambient air quality standards in Ogle County which is an ozone attainment area. Therefore, USEPA is approving this SIP revision.

Because USEPA considers today's action noncontroversial and routine, it is approving it today without prior proposal. The action will become effective on April 23, 1984. However, if the Agency receives notice by March 23, 1984 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

Under U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 23, 1984. This action may be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

This notice is issued under authority of Sections 110 and 172 of the CAA, as amended (42 U.S.C. 7410 and 7502).

Dated: February 3, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart O—Illinois

1. Section 52.720 is amended by adding paragraph (c)(46) as follows.

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(46) On August 15, 1983, the Illinois Environmental Protection Agency submitted a May 19, 1983, Opinion and Order (PCB–82–147) of the Illinois Pollution Control Board (IPCB) granting Del Monte Corporation's Can Manufacturing Plant No. 115 located in Rochelle, Ogle County, Illinois a variance from the IPCB volatile organic compound emission standards under Rule 205(n)(1)(B)(i) and Rule 205(n)(1)(B)(vi) of Chapter 2: Air Pollution Regulations. The variances expires on December 31, 1984.

* * * * *

[FR Doc. 84–4639 Filed 2–21–84; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[AD–FRL–2529–4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The EPA announces final rulemaking on a revision to the Illinois State Implementation Plan (SIP) for total suspended particulates (TSP). The revision consists of a change to Illinois Pollution Control Board (IPCB) Rule 203(g) in the form of the addition of Rule 203(g)(1)(E). EPA's action is based upon a revision which was submitted by the State pursuant to the requirements of Section 110 of the Clean Air Act (Act).

EFFECTIVE DATE: This final rulemaking becomes effective on March 23, 1984.

ADDRESSES: Copies of this revision to the Illinois SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6035 before visiting the Region V Office).

Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

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

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air Programs Branch, Region V, Environmental Protection Agency, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: On May 28, 1982, (47 FR 23485), EPA proposed rulemaking on a proposed revision to the Illinois SIP for TSP in the form of an October 8, 1981, Final Order of the IPCB (R79–11). This order amends Rule 203(g)(1) which sets particulate emission standards and limitations for fuel combustion emission sources using solid fuel exclusively by adding the following subsection:

(E) Existing Coal-Fired Industrial Boilers Equipped with Flue Gas Desulfurization Systems

"Notwithstanding sub-paragraphs (A)–(D) of Rule 203(g)(1), no person shall cause or allow the emission of particulate matter into the atmosphere from existing coal-fired industrial boilers equipped with flue gas desulfurization systems to exceed 0.25 pound of particulate matter per million BTU of actual heat input in any one-hour period. Nothing in this rule shall be construed to prevent compliance with applicable regulations in Part IX of this Chapter."

This subsection (Rule 203(g)(1)(E)) provides a technology based TSP emission limitation for coal burning industrial boilers with flue gas desulfurization (FGD) systems. The IPCB has determined that a particulate matter emission limitation on industrial boilers of 0.25 lb/MMBTU is technologically feasible using either wet or dry (FGD) systems. The IPCB determined that allowing the 0.25 lb/MMBTU emission limit is economically reasonable and that requiring compliance with anything other than a technology-based emission limitation for simultaneous compliance with particulate matter and sulfur dioxide limitations would be economically unreasonable.

During the 30 day public comment period EPA received comments from two parties. The Agency's evaluation of them is summarized below.

A public interest group made the following comments:

Comment

The proposed rule is site specific in nature. Air quality impact analyses have only been prepared for four Caterpillar facilities which are equipped with FGD systems. No analyses have been performed for boilers which may be converted to coal or non-Caterpillar boilers equipped with FGD systems such as the Pfizer Chemical Company facility in East St. Louis.

The failure of the State to analyze the impact of the SIP revision in TSP nonattainment areas is particularly disturbing. Until the State prepares a comprehensive ambient impact analysis, it is unlawful for ERA to approve a general rule. We remind EPA that the Act requires attainment of the health standards as "expeditiously as practicable," but not later than December 31, 1982.

While the State may have initiated studies of nontraditional sources of fugitive dust, EPA does not state in the Federal Register notice if the State has completed the studies and adopted regulations which will result in attainment of the air quality standards by the statutory deadline.

Response

A recent decision of the United States Court of Appeals for the Seventh Circuit Sierra Club vs. Indiana-Kentucky Electric Corporation and Indiana and Michigan Electric Company (Nos. 81–1822 and 81–2173) recently invalidated EPA's approval of the Illinois particulate regulations, deleting IPCB Rules 203(g)(1)(A) through (D) and requiring Rule 203(g)(1)(E) to stand on its own merits. EPA is today approving Rule 203(g)(1)(E) as RACT for the affected sources. It constitutes an improvement in the plan in that it fills, at least in part, the gap created in the plan by the Seventh Circuit decision. EPA is here making no determination of the adequacy of Rule 203(g)(1)(E) to assure attainment and maintenance of the TSP NAAQS.

EPA approved the overall Part D TSP SIP for Illinois because it applied reasonably available control technology (RACT) to the traditional sources of TSP, and contained a commitment to study non-traditional sources. EPA's soon to be issued sanctions policy and guidance will determine what must be done in areas which were unable to attain the national ambient air quality standards (NAAQS) by December 31, 1982, using a RACT plus studies SIP.

Comment

The proposed rule does not reflect RACT for industrial FGD systems. Caterpillar has stated that "significant portions" of the excess particulate emissions are generated by the FGD systems. The excess emissions have been attributed, in part, to the carryover of sulfuric acid mist (Caterpillar Exh. 2, p. 16). This phenomenon is only experienced in wet scrubbers operated on stoker-fired boiler burning high sulfur coal. Sulfuric acid mist carryover is not a problem in dry FGD systems. In a dry system, care must be taken to maintain high flue gas temperature rates in order

to avoid condensation of solids on the surfaces of the Fabric filter. Unlike wet FGD systems, the flue gas temperatures in dry FGD systems are adequate to prevent water vapor from condensing and combining with sulfur trioxide to form sulfuric acid. With boiler flue gas temperatures ranging between 350 degrees F. and 400 degrees F. the small quantity of water in the alkali is completely evaporated in a dry system.

We note that there are two dry scrubbers operating in Illinois. In addition to the Pfizer scrubber, Argonne National Laboratories has installed a dry scrubber. These systems have been designed to meet a 0.1 lbs/MMBTU standard.

Response

Whether or not dry FGD systems do not generate excess particulate emissions is not relevant to this rulemaking. The rulemaking is concerned with the determination of RACT for existing, wet FGD systems. The State is encouraged to take the effectiveness of dry FGD systems into account as part of its new source or PSD review of any subsequently constructed or modified boilers to use FGD Emissions Controls. However, the effectiveness of dry FGD systems has no bearing on the determination of RACT for exising wet FGD systems.

Comment

The proposed rule is not enforceable because it fails to specify a test method by which compliance is to be assessed. This omission is particularly significant since the test methods for particulate emission standards may be redefined by EPA.

We understand that EPA has been experimenting with a new test method for stoker-fired boilers at General Motor's Parma Plant. This new test procedure, Method 5B, is designed to exclude the measurement of sulfuric acid and sulfate emissions during stack tests by raising the temperature of the filter and probe on an EPA Method 5 sampling train from 248 F. to 350 F. Preliminary results indicated that particulate concentrations at the outlet of the scrubber are substantially reduced when measured by Method 5B.

If this new test procedure is adopted, Caterpillar will be able to reduce the efficiency of its scrubbers and emit additional particulates into the atmosphere. The only difference will be that the test method will not measure sulfuric acid and sulfate emissions generated by the scrubber. However, hi-volume samplers in the area will measure such emissions.

To overcome this problem and prevent Caterpillar from emitting more particulates into the atmosphere than projected in the modeling analysis we believe the State should specify the use of EPA Method 5 for determining compliance. This will ensure that all particulate emissions which contribute to ambient concentrations in the vicinity of Caterpillar's plants are controlled.

Response

EPA agrees that testing at higher temperatures would tend to reduce particulate concentrations as obtained by stack testing. It is EPA's position that testing at the higher temperatures indicated in the modification to Method 5 in Subpart D (as it applies to NSPS sources) would only be appropriate for NSPS sources. The appropriate test method for the sources covered by this rule (and the test method used to generate the data to support this rule revision) is Method 5.

The following comments were made by the legal representative of the Caterpillar Tractor Company:

Comment

Rule 203(g)(1) is not a valid part of the Illinois SIP. Caterpillar's submittal of the proposed revision to Rule 203(g)(1) of the IPCB Air Pollution Control Regulations was done to allow Caterpillar to come into unquestioned compliance.

Caterpillar has maintained throughout the State proceedings and maintains a similar position with respect to the proposed revision to the Illinois SIP that Rule 203(g)(1) is invalid for State purposes and accordingly does not exist as part of the Illinois SIP. In support of this position, Caterpillar incorporates its comment letter dated August 27, 1981.

Response

EPA's position is that the invalidation of Rule 203(g)(1) (A) through (D) requires that Rule 203(g)(1)(E) stand alone on its own merits. This view is supported by the most recent edition of the State of Illinois Air Pollution Control Regulations which indicates that Rule 203(g)(1)(E) was adopted after the Court challenge of Rule 203(g)(1) and is a valid rule.

Comment

Rule 203(g)(1)(E) is applicable to all of Caterpillar's coal-fired industrial boilers equipped with flue gas desulfurization systems.

The IPCB, on September 3, 1981, clarified that Rule 203(g)(1)(E) would apply to "all boilers which are in use or under construction on the effective date of this rule." Therefore, in addition to those Caterpillar boilers listed in the proposed rule, Morton Boilers 1 and 2 and Mapleton Boilers 2, 3, 4 and 5 are sources covered by Rule 203(g)(1)(E).

Response

USEPA agrees that Morton Boilers 1 and 2 are covered by Rule 203(g)(1)(E). The State provided the following additional information to clarify whether or not Morton boilers 1 and 2 covered by Rule 203(g)(1)(E):

(1) The Morton Boilers are under 80 MMBTU and were previously subject to a limit of 0.25 lb/MMBTU.

(2) They were stack tested and found to be in compliance with this rule.

Mapleton boilers #2–5 are covered by this rulemaking action. EPA, however, has determined that these boilers are also subject to NSPS and these, more stringent, NSPS limitations control actual emissions from these boilers.

Comment

Not all of Caterpillar's boilers which are regulated by Rule 203(g)(1)(E) are located in non-attainment areas and therefore subject to RACT. The Mapleton Plant is located in Hollis Township in Peoria County. The Mossville Plant is located in Medina Township in Peoria County. The Morton Plant is located in Morton Township in Tazewell County. These three townships have been designated as primary total suspended particulate ("TSP") attainment areas 40 CFR Part 81.314. Therefore, RACT does not apply to these plants.

Response

These three townships are secondary TSP nonattainment areas. RACT is required in secondary nonattainment areas. And, as noted above, the Mapleton boilers are subject to NSPS.

In consideration of the public comments received in response to the May 28, 1982, Notice of Proposed Rulemaking (47 FR 23485), EPA has determined that Rule 203(g)(1)(E) is RACT and approves the incorporation of this rule into the Illinois SIP for TSP. This notice is not a determination that Illinois has met all Act requirements for TSP nonattainment areas. It should be noted that in portions of the May 28, 1982, Notice of Proposed Rulemaking (47 FR 23485), Rule 203(g), Rule 203(g)(1), and Rule 203(g)(1)(E) were incorrectly listed as Rule 203(q), Rule 203(q)(1), and Rule 203(q)(1)(E) due to a typographical error.

EPA is announcing final rulemaking today without re-proposal since these were obvious typographical errors and these rules were correctly cited

elsewhere in the notice of proposed rulemaking.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 23, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

This notice is issued under authority of Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: February 3, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

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

1. Section 52.720 is amended by adding paragraph (c)(41) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(41) On December 7, 1981, the State submitted a October 8, 1981, Illinois Pollution Control Board Final Order (R79–11). This Final Order amends Rule 203(g)(1) by adding subsection (E).

[FR Doc. 84–4645 Filed 2–21–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300080A; PH–FRL 2529–1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Synthetic Petroleum Wax

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for synthetic petroleum wax when used as an inert ingredient in pesticide formulations. This rule was requested by Petrolite Corp.

EFFECTIVE DATE: Effective on February 22, 1984.

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

FOR FURTHER INFORMATION CONTACT:

N. Bushan Mandava, Registration Support and Emergency Response Branch, Registraton Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7700).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 19, 1983 (48 FR 48477), which announced that Petrolite Corp., Tulsa, OK 74112; had submitted a request that 40 CFR 180.1001(c) be amended by establishing an exemption from the requirement of a tolerance for synthetic petroleum wax as a coating agent in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. Subsequent to the issuance of this notice of filing, Petrolite Corp. requested that the exemption be expanded to include the use of synthetic petroleum wax as a "binder" and a "carrier," as well as a coating agent, in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. The use of synthetic petroleum wax as a "binder" or "carrier" is generally confined to preharvest application. This addition to the final rule is of little, if any, toxicological concern, particularly in light of the published food additive uses of this biologically unavailable wax.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Except for the request from Petrolite Corp., as noted above, there were no comments or requests for referral to an advisory committee received in response to the proposed rule.

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

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

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: February 7, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
*	* * * *	
Synthetic petroleum wax, conforming to 21 CFR 172.888.		Binder, carrier, and coating agent.
*	* * * *	

[FR Doc. 84–4509 Filed 2–21–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6510]

Final Flood Elevation Determination; Indiana; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; correction.

SUMMARY: The Federal Emergency Management Agency has published a list which included the final flood elevation determination for the Unincorporated Areas of Clark County, Indiana. This notice will serve to delete Clark County, Indiana from that list.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: As a result of a recent engineering analysis, the Federal Emergency Management Agency has determined that the notice of final flood elevation determination for the Unincorporated Areas of Clark County, Indiana, published at 48 FR 46991, on October 17, 1983, should be deleted.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968) as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: February 10, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–4649 Filed 2–21–84; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL MARITIME COMMISSION

46 CFR Part 503

Public Information

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Commission's public information rules are amended to reflect the availability of the Commission's guide on shipping automobiles publication entitled "Automobile Manufacturers' Measurements" from the U.S. Government Printing Office, rather than from the Commission.

EFFECTIVE DATE: February 22, 1984.

FOR FURTHER INFORMATION CONTACT: Hubert E. Bradford, Chief, Office of Domestic Tariffs, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, Telephone: (202) 523–5856.

SUPPLEMENTARY INFORMATION: In the past, the Commission has printed the "Automobile Manufacturers' Measurements" and made it publicly available for a $5 fee. To continue to do so, however, would be contrary to the requirements of 44 U.S.C. 1701 which mandates that such work must be performed by the U.S. Government Printing Office (GPO). Accordingly, effective with the 1984 issue, this document will be printed, sold and distributed by GPO. The GPO will determine the selling price. Since 46 CFR 503.43(f) provides that copies of the publication are available from the Commission, the Commission's rule is being amended to reflect the availability of the document from GPO.

List of Subjects in 46 CFR Part 503

Government publications.

PART 503—[AMENDED]

Accordingly, 46 CFR 503.43(f) is revised to read as follows:

503.43 Fees for services.

* * * * *

(f) The FMC guide on the shipping automobiles, entitled "Automobile Manufacturers' Measurements," is available from the U.S. Government Printing Office, on a subscription basis.

* * * * *

Effective Date: Notice, public procedure and delayed effective date are not necessary for the promulgation of this amendment because of its nonsubstantive nature. Accordingly, this amendment shall be effective February 22, 1984.

(81 Stat. 54; 5 U.S.C. 552)

By the Commission.

Francis C. Hurney,

Secretary.

[Doc. 84–4634 Filed 2–21–84; 8:45 a.m]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket No. RSOR–7, Notice 2]

Protection of Employees During Hump Operations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends FRA's Railroad Operating Rules to require that railroads establish procedures under which train and yard crews performing certain functions on hump yard tracks will be protected from injury as the result of unanticipated movement of the rolling equipment on which they are working. This action responds to a joint request from the Association of American Railroads (AAR) and the United Transportation Union (UTU) that FRA establish uniform procedures for the protection of workmen in such facilities.

EFFECTIVE DATE: March 23, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Fine, Director, Office of Safety Analysis, FRA, Washington, D.C. 20590. Telephone: 202–472–4770.

SUPPLEMENTARY INFORMATION:

Background

Railroads assemble, disassemble, and reassemble freight trains in approximately 4,000 classification yards in the contiguous 48 states. In approximately 125 such yards, railroads employ a gravity feed system to assist in the classification of freight cars for movement to destination. These are known as "hump yards." Although the configuration of hump yards varies considerably depending on location and yard capacity, their essential feature is a single track at the apex of a hill that branches into multiple tracks on one downward side of the hill.

Freight cars are shoved by a locomotive to the apex of the hill in long strings, uncoupled singly or in groups, and allowed to roll freely into the multiple tracks on the downward slope. Mechanical devices known as retarders are used to limit the speed at which the cars move down the hill. Routing of a car of group of cars to a particular track is accomplished by aligning the

appropriate switches to direct the movement to the desired track. The group of tracks on the downside of the hill is commonly referred to as the bowl tracks of the yard.

When a freight car reaches the apex of the hill, *i.e.*, the hump, the car is uncoupled manually. The individual in charge of the hump then activates a control panel to establish the routing for that car and to determine the amount of brake force to be applied by the retarder for controlling the speed and distance the car will be allowed to travel on the bowl tracks. After a group of cars has been allowed to enter a given bowl track, a yard crew, using a locomotive, couples the cars and connects the airhoses between them in order that they can be moved as a single unit. In performing these tasks, members of the yard crew must position themselves between the cars in such a manner that unanticipated movement of the cars poses a significant risk of injury.

Movement of cars in the bowl results from use of a yard locomotive or from the impact of other cars entering the track from the hump. The risk of injury to members of the yard crew from unanticipated movement of the locomotive is remote since the person operating the locomotive is aware of their actions, of the risks associated with unanticipated movement, and of the need to be guided by the instructions of the exposed yard crew concerning when the cars can be moved safely. It is, therefore, the risk to the yard crew from unanticipated movement caused by the impact of another car arriving from the hump that FRA is addressing in this rule.

In response to a joint recommendation from the AAR and the UTU, FRA published a proposed rule to address this problem on October 4, 1983 (49 FR 45272). All eight commenters responding to that notice urged adoption of the proposed rule.

Three of the commenters suggested that FRA expand the coverage of the proposed rule as to both the type of facilities and the type of employees. FRA has decided not to implement these suggestions in adopting this final rule. To expand the application of this rule beyond hump yards would significantly alter the nature of the AAR/UTU recommendation and the impact of the rule. The AAR/UTU recommendation and the FRA's proposed rule would apply to fewer than 125 locations, whereas the suggested expansion of this rule to include all yard facilities would bring some 4,000 yards within its scope. Such broadened applicability would be beyond the scope of the notice of FRA's proposal and is not warranted either by the nature of the hazard presented in non-hump yard operations or by the available accident statistics. Nor has FRA adopted the suggestion for expanding the type of employees who are to be provided improved protection at hump yards. Those not covered by this final rule already receive adequate protection under a different set of regulatory provisions.

Several commenters suggested that FRA clarify the applicability of the proposed rule. The first area of clarification sought by these commenters involves the use of hump yards that either lack a remote control capability or, having it, are being operated without its use. Since FRA can identify only a handful of hump yards that lack remote control capability, FRA does not intend to bring operations at those facilities within the scope of this regulation. In those instances where a hump yard is capable of being remotely controlled but is functioning in a manual mode, the facility is normally underutilized or experiencing technical problems with its remote control devices. Compliance with this regulation does not appear to be warranted in either instance. FRA has added the words "remotely controlled" as a description in the regulatory language to indicate that the rule does not apply to manual humps or to remotely controlled humps that are functioning in a manual mode.

One commenter expressed concern over its ability to comply with the regulation at a single facility where routing functions for switches are computer controlled. The commenter indicated that a specially designed wedge would be inserted to prevent computer override of the desired alignment of the switch at that facility. The insertion of that wedge would be performed at the direction of the remote control operator. FRA believes that the insertion of this wedge would provide the appropriate level of protection and that alteration of the proposed rule language to specifically sanction that practice is not necessary.

The remaining comments sought clarification of FRA intent in adopting this rule so as to address possible compliance issues. One commenter sought assurance that humping operations on a particular track can be resumed if the employees working on that track have completed their initial tasks. Such intermittent humping is permissible if the employees have been appropriately notified and are again provided with protection before they resume the tasks that expose them to risk. In a similar vein, a commenter noted that normal switching operations, when the hump is not in service, would not expose the switch crew to danger of unanticipated movement caused by the arrival of cars from the hump and that compliance with the regulation should not be necessary for those switching moves. FRA agrees with that commenter's interpretation since the rule is intended to protect employees only from hump operations.

The final comment concerning FRA's intent involved the details of the notification procedure. According to the commenter, there are a number of facilities where the yardmaster or hump supervisor would be the person contacted by the crewmembers. This person would then instruct an individual at the control machine to apply the blocking or locking device. This relay system is used since the person at the control machine does not have immediate access to the appropriate communication equipment for contacting crewmembers. The commenter sought assurance that the use of the yardmaster or hump supervisor to bridge the personal communication gap between the crewmember and the control operator was permissible. FRA's regulatory language does not preclude that practice and FRA believes that such a practice should result in reliable notification procedures.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule as defined under Executive Order 12291 nor a "significant" rule as defined under DOT regulatory policies and procedures (44 FR 11034). The rule will have a direct impact only on the thirty railroads that operate hump yards. To the degree that individual railroads within that group already have an analogous procedure, the rule will have virtually no economic impact. Although FRA is constrained in its analysis by the absence of well-defined economic and accident data, FRA has concluded that the rule will involve only minimal costs for the railroads and should have a positive economic impact through reduced accident costs. Although FRA specifically requested information on the economic impact of this regulation, none of the commenters addressed this issue. Since FRA originally concluded that the economic impact is expected to by minimal and has received no information to the contrary, FRA has determined that further evaluation is not necessary.

Since only railroads of considerable size operate hump yards, this rule will have no adverse impact on small entities. Based on the facts set forth in this final rule, it is certified that the rule will not have a significant economic

impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

There are information collection requirements indirectly contained in this final rule and these have been submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Although FRA specifically solicited comments on the potential paperwork burden imposed by the proposed regulations, no comments on this issue were received. The indirect information collection requirements associated with this proposed rule stem from the provisions of §§ 217.7 and 217.9 of a related regulation. That regulation (49 CFR Part 217) requires all railroads to conduct periodic operational tests to determine compliance with their rules and to provide the results of that testing together with a copy of their rules to FRA. The increase in the existing information collection requirements associated with adoption of this proposed rule has been approved by OMB (OMB Approval No. 2130–0035).

Environmental Impact

On June 16, 1980, FRA published (45 FR 40854) revised procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1C.

These FRA procedures require that an "environmental assessment" be performed prior to all major FRA actions. The procedures categorically exempt certain actions from the requirements for an environmental assessment because thay are not major actions.

The FRA environmental procedures also contain a provision that enumerates seven criteria, which, if met, demonstrate that a non-categorically exempt action is not a "major" action for environmental purposes. These criteria involve diverse factors, including the availability of adequate relocation housing; the possible inconsistency of the action with Federal, State or local law; the possible adverse impact on natural, cultural, recreational, or scenic environments; the use of properties covered by section 4(f) of the DOT Act; and the possible increase in traffic congestion. This proposed rule meets the seven criteria that establish an action as a non-major action.

List of Subjects in 49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroads.

PART 218—[AMENDED]

In consideration of the foregoing, FRA is amending Part 218, Title 49, Code of Federal Regulations, as set forth below:

1. 49 CFR Part 218 is amended by adding a new § 218.39, to read as follows:

§ 218.39 Hump operations.

After June 30, 1984, each railroad that operates a remote control hump yard facility must have in effect an operating rule that adopts the following provisions in substance:

(a) when a train or engine service employee is required to couple an air hose or to adjust a coupling device and that activity will require that the employee place himself between pieces of rolling equipment located on a bowl track, the operator of any remotely controlled switch that provides access from the apex of the hump to the track on which the rolling equipment is located shall be notified;

(b) upon such notification, the operator of such remotely controlled switch shall line it against movement to the affected bowl track and shall apply a locking or blocking device to the control for that switch; and

(c) the operator shall then notify the employee that the requested protection has been provided and shall remove the locking or blocking device only after being notified by the employee that protection is no longer required on that track.

2. 49 CFR Part 218 is amended by adding a new § 218.41, to read as follows:

§ 218.41 Prohibited acts.

A railroad is subject to a penalty, as provided in Appendix A of this part, if it (a) fails to issue an operating rule as required by § 218.39 of this part or (b) fails to comply with its operating rule issued pursuant to § 218.39 of this part.

3. 49 CFR Part 218 is amended by revising Appendix A to read as follows:

APPENDIX A—SCHEDULE OF CIVIL PENALTIES

Section	Violation	Intentional violation [1]
218.23 Blue signal display	$750	$2,000
218.25 Workmen on main track	750	2,000
218.27 Workmen on other than main track	750	2,000
218.19 Alternate methods of protection	750	2,000
218.30 Remotely controlled switches:		
(a) and (b)	750	2,000
(c)	500	1,000
218.41 Prohibited acts:		
(a) No rule adopted	500	2,000
(b) Rule compliance	750	2,000

[1] For the purposes of this schedule, an intentional violation is the knowing and willful failure of a carrier, its officers or agent to comply with the provisions of this part. The Administrator reserves the authority to assess the maximum penalty of $2,500 for a violation of any section contained in Part 218.

(Sec. 202, 84 Stat. 971 (45 U.S.C. 431); sec. 1.49(m) of the Regulations of the Secretary of Transportation (49 CFR 1.49(m))

Issued in Washington, D.C. on February 14, 1984.

John H. Riley,

Administrator.

[FR Doc. 84–4403 Filed 2–21–84; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 31222–248]

Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects the authority citation in the final rule that was published February 3, 1984, at 49 FR 4212. This rule revises the conditions that require redetermination of domestic annual processing capacity in the Atlantic silver and red hake fishery.

FOR FURTHER INFORMATION CONTACT: Peter Colosi, 617–281–3600 ext. 272.

Dated: February 16, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—[CORRECTED]

In FR Doc. 84–2976, appearing at page 4213 in the issue of February 3, 1984, preceding the regulatory text, second column, the authority citation is corrected to read "Authority: 16 U.S.C. 1801 *et seq.* unless otherwise noted."

[FR Doc. 84–4652 Filed 2–21–84; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 652

[Docket No. 31220-245]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule-related notice; surf clam fishing time adjustment.

SUMMARY: NOAA reduces allowable surf clam fishing time from 24 to 12 hours per week for vessels harvesting surf clams in the Mid-Atlantic Area of the fishery conservation zone. The action is required to prevent significant overharvest of surf clam allocations and avoid prolonged closure of the fishery. The action is intended to reduce the rate of harvest from the fishery.

EFFECTIVE DATE: February 26, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls (Surf Clam Management Coordinator), 617-281-3600, ext. 324.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 3 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries were published on January 29, 1982 (47 FR 4268). The regulations contain at 50 CFR 652.22(a)(3)(i) a provision for reduction of allowable surf clam fishing time if, on review of available information, the Regional Director determines during any quarter that the quarterly quota for surf clam harvest probably will be exceeded.

Logbooks submitted by fishermen and processors show that during the first five weeks of the current fishing quarter, which began on January 1, 1984, surf clam landings exceeded 348,000 bushels. Thus, 59 percent of the quota for the quarter has been harvested during only 38 percent of the quota period. The harvest rate has escalated during the quarter to the extent that no possibility exists for harvests and allocations to return to a balance without a reduction in fishing time.

The Regional Director has determined that without a reduction in fishing time for surf clams the quarterly quota and subsequent allocations will be exceeded. The Secretary of Commerce, therefore, reduces fishing time to reduce the possibility that harvests will significantly exceed allocations or annual optimum yield.

The reduction of fishing time will begin on February 26, 1984, and continue until harvests and allocations are again in balance.

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: February 16, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc 84-4653 Filed 2-21-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 36
Wednesday, February 22, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 1049

Milk in the Indiana Marketing Area; Notice of Proposed Suspension/ Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension/ termination of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for April 1984 through December 1985 the seasonal producer payment plan (Louisville plan) under the Indiana Federal milk order that was designed to encourage level production throughout the year. The action was requested by Hoosier Milk Marketing Agency, Inc., a federation of cooperative associations representing about three-fourths of producers supplying milk to the market. The federation states that the suspension is needed to maintain an appropriate alignment of producer prices with other markets.

Comments also are invited on whether the Louisville plan should be terminated.

DATE: Comments are due on or before March 8, 1984.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building; U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on dairy farmers and would not affect milk handlers.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension or termination of the following provisions of the order regulating the handling of milk in the Indiana marketing area is being considered for April 1984 through December 1985:

1. In § 1049.61, paragraph (f), the words "For the months of January through March and August," and all of paragraphs (g) through (l).

2. In § 1049.75(a), the words ", and, for the months of April through July plus an additional 20 cents, or for the months of September through December minus the amount computed pursuant to § 1049.61(i)".

All persons who want to send written data, views or arguments about the proposed suspension/termination should send two copies of them to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this notice in the **Federal Register.**

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for April 1984 through December 1985, the provisions of the Indiana milk order that contain the seasonal producer payment plan or "Louisville plan," for the order. Under those provisions, 20 cents per hunderweight of producer milk is deducted from the pooled value of milk in computing the uniform prices to producers during the months of April through July. The monies then are added to the pooled funds in computing the uniform prices to producers for each month of September through December. This payment plan is intended to encourage relatively level milk production throughout the year.

Suspension of the Louisville plan for April 1984 through December 1985 was requested by Hoosier Milk Marketing Agency, Inc., a federation of cooperative associations representing most of the producers supplying the market. In supporting its request the federation states that the suspension is needed to maintain alignment of producer pay prices with adjoining markets. In support of that claim, the federation pointed out that the Louisville plan under the neighboring Louisville-Lexington-Evansville order has been replaced with a seasonal base and excess plan. In addition, the petition states that suspension of the Louisville plan will be requested for the Ohio orders as well. The federation maintains that suspension of these provisions of the Indiana order through 1985 is necessary because of uncertainties of supply that may result from enactment of the Dairy and Tobacco Adjustment Act of 1983. The paid diversion portion of that action will continue to operate through March 1985.

The Louisville plan in the Indiana order was suspended from operation in 1983. The suspension last year, together with a proposed suspension for two more years, raises questions about whether the plan should be terminated. Accordingly, commentors are requested to state their views on whether the Louisville plan is accomplishing its intended purpose and whether it should be terminated on or before April 1, 1984.

List of Subjects in 7 CFR Part 1049

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, D.C. on: February 16, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84–4688 Filed 2–21–84; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 1124

Milk in the Oregon-Washington Marketing Area; Extension of Time for Filing Comments on Proposed Termination

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing comments.

SUMMARY: This notice extends the time for filing comments on the proposed termination of the base-excess payment provisions of the Oregon-Washington milk order. The proposed termination was issued January 27, 1984, in response to a request from Northwest Dairymen's Association, a cooperative association representing a large number of producers pooled under the order. Farmers Cooperative Creamery, another cooperative association that is a handler under the order, has requested that the time allowed for comment be extended until March 2 to afford interested parties more time to formulate and express their views.

DATE: Comments are now due on or before March 2, 1984.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250; (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Termination of Certain Provisions of the Order: Issued January 27, 1984; published February 1, 1984 (49 FR 4005).

Notice is hereby given that the time for filing comments on the proposed termination of the base-excess plan used in distributing returns to producers whose milk is priced under the Oregon-Washington milk order is hereby extended to March 2, 1984.

Any comments that are received will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

List of Subjects in 7 CFR Part 1124

Milk marketing orders, Milk, Dairy Products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C. on: February 16, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84–4687 Filed 2–21–84; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Analysis of Potential Pressurized Thermal Shock Events

Correction

In FR Doc. 84–3297 beginning on page 4498 in the issue of Tuesday, February 7, 1984, make the following corrections:

1. On page 4498, column one, remove the semicolon in the subject heading.

2. On the same page, column two, SUPPLEMENTARY INFORMATION, paragraph two, line eight, "values" should read "valves".

3. On the same page, column three, second complete paragraph, line ten, "vessles" should read "vessels".

4. On page 4499, column one, second complete paragraph, line thirteen, "vales" should read "values".

5. On the same page column two, first complete paragraph, line sixteen, "basis" should read "bases"; also in lines twenty and twenty-one "criterion was based on generic studies, and since the purpose of the" should be removed.

6. On page 4500, column three, second complete paragraph, line two, "role" should read "rule".

§ 50.61 [Corrected]

7. On page 4501, column three, § 50.61(b)(2), Equation 2 should be corrected to read "Equation 2: $RT_{NDT}=I+M+283\ f^{0.194}$".

BILLING CODE 1505–01–M

DEPARTMENT OF ENERGY

10 CFR Part 961

Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: On April 18, 1983 the Department of Energy (DOE) published a rule which established a standard contract to be used by the DOE in furnishing disposal services to the owners or generators of spent nuclear fuel and/or high level radioactive waste (48 FR 16590). This document proposes to amend Article VIII of the contract, which contains the fees and terms of payment provisions. This proposal is based in part on a request from the Utility Nuclear Waste Management Group for clarification of the one-time fee provision concerning calculating the cost of disposal services.

DATE: Comments must be submitted on or before March 23, 1984.

ADDRESS: Comments should be addressed to Michael J. Lawrence, Acting Director, Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue, SW., Room 7B–084, Washington, D.C. 20585, (202), 252–6842.

FOR FURTHER INFORMATION CONTACT:
Michael W. Kurgan, Office of Civilian Radioactive Waste Management, Department of Energy, Room 7F–059, Washington, D.C. 20858 (202) 252–2281
James Cavanagh, Office of the Director, MA–4, Procurement and Assistance Management Directorate, Department of Energy, Room 5B–080, Washington, D.C. 20585, (202) 252–8616
Elliot Winnick, Office of General Counsel, Department of Energy, Room 6B–190, Washington, D.C. 20585, (202) 252–1526

SUPPLEMENTARY INFORMATION: Article VIII of the standard contract provides, in pertinent part, that a one-time fee is assessed for fuel used to generate electricity prior to April 7, 1983, based upon the schedule set forth in paragraph A.2. of Article VIII (48 FR 16602), which specifies that "discharged nuclear fuel is that fuel removed from the reactor core with no plans for reinsertion. In the event that any such fuel withdrawn with plans for reinsertion is not reinserted, then the applicable fee shall be calculated as set forth in this paragraph 2." Under paragraph A.3, which prescribes the fee for in-core fuel burned through April 6, 1983, it is provided that such "in-core fuel is that fuel in the reactor core as of the date specified [April 7, 1983], plus any fuel removed from the reactor with plans for reinsertion." (48 FR 16602).

DOE has received a request from an industry association, the Utility Nuclear Waste Management Group, representing 43 of the utilities that have entered into contracts with DOE for nuclear waste disposal services, which seeks clarification of the aforesaid one-time fee provisions quoted above.

Specifically, these Purchasers have requested that provision be made in the event that reinsertion plans should change subsequent to October 1, 1983, which is the date specified in Article IV.A.1(b) of the contract for providing information on the "total number of fuel assemblies removed prior to . . . April 7, 1983 for which there are plans for reinsertion" (48 FR 16601).

The Department has considered this request and now proposes to revise Article VIII of the contract as set forth

below, consistent with Article XV, "Amendments", contained therein (48 FR 16604), and recognizing that circumstances which could not be anticipated at the time the reinsertion plans were made could arise so as to require a change in those plans. Accordingly, DOE proposes to modify Part 961.11 of the final rule and the standard contract by specifying the procedures for Purchasers to notify DOE of such change in reinsertion plans and the calculation of any fee adjustment that may result therefrom.

Appendix E of the standard contract provides, in paragraph B.1. thereof, for specified "maximum nominal physical dimensions" (48 FR 16606). A number of utility Purchasers have requested that the Active Fuel Length for a Pressurized Water Reactor (PWR), which is now limited to "12 feet, 0 inches" be revised to 12 feet, 6 inches. These Purchasers point out that the requested revision is necessary to reflect and accommodate the current fuel design of one of the major domestic PWR manufacturers, the Combustion Engineering Corporation.

DOE has considered this requested technical revision and believes that such a change would be appropriate and desirable. Accordingly, DOE proposes to revise the aforesaid specification, as set forth below, recognizing that such a revision would be consistent with the current reactor fuel design now being used by several utility Purchasers whose reactors are just now attaining operational maturity. By this proposed revision to Appendix E, the specifications governing (1) overall length; and (2) active fuel length; for both PWR and Boiling Water Reactors (BWR) will be identical except for the Cross Section specification which will remain 6 inches x 6 inches for the BWR and 9 inches x 9 inches for the PWR.

For the reasons set out above, Part 961, Chapter III of title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., February 14, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

List of Subjects in 10 CFR Part 961

Government contracts, Nuclear materials, Nuclear powerplants and reactors, Radiation protection, Waste treatment and disposal.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254) and Sec. 302, Pub. L. 97–425, 96 Stat. 2257 (42 U.S.C. 10222).

PART 961—[AMENDED]

§ 961.11 [Amended]

Accordingly, 10 CFR 961.11 is proposed to be amended as follows:

1. In Article VIII, following paragraph A.3. (48 FR 16602), the following new section will be added:

4. "If the Purchaser's plans for reinserting fuel assemblies are changed after October 1, 1983, the following procedure and fee calculation shall be applied:

"(a) Purchaser shall notify DOE of the specific change(s) in the reinsertion plan no later than 60 days after such change(s) is made. As part of this notification, the Purchaser shall provide the information specified in Annex B to Appendix G annexed hereto; *provided, however,* that such information need not be furnished on magnetic tape.

"(b) The one-time fee shall be calculated using the new (revised) reinsertion plan. If the revised reinsertion plan results in fuel being reclassified from in-core to discharged fuel, the fee should be calculated as specified in paragraph 2 above. If the revised reinsertion plan results in fuel being reclassified from discharged to in-core fuel, the fee should be calculated as specified in paragraph 3 above.

"(c) If no payment of the one-time fee has been made, the revised one-time fee shall replace the previously calculated one-time fee. Payment shall be made in accordance with the selected payment option under paragraph B.2. of this Article VIII.

"(d) If payment of the one-time fee or any portion thereof has been made, the one-time fee previously calculated under the prior reinsertion plan shall be subtracted from the amount derived pursuant to subparagraph (b) above to determine any addition or reduction to the said fee.

"(i) If any additional fee is due by reason of the calculations specified in subparagraphs (b) and (d) above, such additional fee shall be paid in full with interest with the next remittance advice. Interest is to be calculated from April 7, 1983 to the date of the payment based upon the 13-week Treasury bill rate, as reported on the first such issuance following April 7, 1983, and compounded quarterly thereafter by the 13-week Treasury bill rates as reported on the first such issuance of each succeeding assigned three-month period until payment.

"(ii) If any reduction in the fee results by reason of the calculations specified in subparagraph (b) and (d) above, the Purchaser may claim an adjustment equal to the amount of overpayment calculated in accordance with subparagraph (d) above on the next remittance advice (Annex B to Appendix G)."

2. In Article VIII, paragraph A.4. is renumbered A.5.

3. In Article VIII, the address shown in paragraph B.3.(b) is reivsed to read: "Department of Energy, Office of the Controller, Special Accounts and Payroll Division, P.O. Box 500, Room E–264, Germantown, Maryland 20874."

4. Appendix E, section B.1, will be revised to read as follows:

"B. *Fuel Description and Subclassification—General Specifications.*

"1. *Maximum Nominal Physical Dimensions.*

	Boiling water reactor (BWR)	Pressurized water reactor (PWR)
"Overall Length	14 feet, 11 inches	14 feet, 11 inches.
"Active Fuel Length.	12 feet, 6 inches	12 feet, 6 inches.
"Cross Section	6 inches×6 inches.	9 inches×9 inches.

[FR Doc. 84–4516 Filed 2–21–84; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563, 570, and 584

[No. 84–81]

Net-Worth Requirements of Insured Institutions

February 15, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is proposing to amend its regulations pertaining to the minimum net-worth requirements applicable to all institutions the accounts of which are insured by the FSLIC ("insured institutions"). The proposed rule would impose a net-worth requirement equal to at least three percent on any increase in liabilities after December 31, 1983. This would result in gradually eliminating the authority to (1) calculate net worth on a five-year average basis and (2) phase in the requirement over a twenty-year period. Minimum net worth would continue to include two percent of recourse liabilities plus twenty percent of scheduled items. The Board is also proposing to eliminate the requirement to calculate "statutory reserves" as a percentage of insured deposits. Instead,

compliance with the net-worth requirement would be considered sufficient.

The Board is proposing to impose the marginal net-worth requirement on new liabilities because the Board believes that the ability to leverage new liabilities beyond 33 to 1 is excessive. The proposed regulation would not necessarily require associations to generate new net worth to support net additions to liabilities after December 31, 1983. To the extent that associations have net worth above current regulatory minimums, they can use this net worth to support additions to liabilities. The Board believes that a principal problem faced by the thrift industry is the rapid growth of thrift institutions which do not have adequate levels of capital to support that growth. This problem is seriously exacerbated by current regulations which permit thrifts to use a five-year averaging formula in calculating their minimum net-worth requirements, as well as a twenty-year phase-in of required net worth for new institutions. If the proposed amendments are adopted, they would become effective for any fiscal year beginning after September 30, 1984.

DATE: Comments must be received by April 23, 1984.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Comments will be publicly available at this address.

FOR FURTHER INFORMATION CONTACT: Robert S. Monheit, Attorney, Office of General Counsel, (202) 377–6465, or Edward Taubert, Assistant Director, Policy and Regulation Division, Office of Examination and Supervision, (202) 377–6484, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Garn-St Germain Depository Institutions Act of 1982 ("DIA"), Pub. L. 97–320, amended the provisions of section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. 1726(b), which require insured institutions to provide adequate reserves satisfactory to the FSLIC, as established in accordance with FSLIC regulations. Prior to the DIA amendment, § 403(b) of the NHA limited the FSLIC regulation to an amount no greater than six percent and no less than three percent of insured accounts, and directed the Board to permit a phase-in of this requirement over a period not exceeding twenty years. The DIA eliminated (1) the reference to insured accounts as the basis of the calculation, (2) the percentage range within which the Board had been previously limited, and (3) the direction to phase in the requirement over twenty years.

The Board implemented the requirements of section 403(b) of the NHA by promulgating 12 CFR 563.13, which set forth the "statutory reserve" requirement and also a "minimum net worth" requirement which the Board has used, in part, to gauge capital adequacy. The minimum net-worth requirement differs from the statutory reserve requirement in that net worth is calculated as a percentage of total liabilities rather than as a percentage of insured deposits, and the calculation of minimum net worth includes two percent of recourse liabilities and twenty percent of scheduled items. Both the minimum net-worth requirement and the statutory-reserve requirement permit institutions to calculate liabilities and deposits, respectively, by averaging the past fiscal year with the preceding four fiscal years (a procedure known as "five-year averaging"). Also, institutions that have not reached their twentieth anniversary of insurance are permitted to phase in the net-worth and statutory-reserve requirements by multiplying three percent of liabilities and deposits, respectively, by a fraction the numerator of which is the number of consecutive years of insurance and the denominator of which is twenty (a process known as "twenty-year phase-in").

The Board is concerned that the recent rapid growth of many insured institutions has significantly reduced the capital coverage in an industry that has experienced chronic capital deficiencies. Rapidly growing institutions have been able to achieve their high growth rates and still meet required capital levels in part due to the use of five-year averaging and twenty-year phase-in. For example, an institution that became an insured institution just prior to November, 1983, would be required to have net worth and statutory reserves equal to only 0.15 percent of liabilities and 0.15 percent of insured accounts, respectively. This, in effect, places no limit on the rate of growth of institutions since it permits a debt-to-equity ratio as high as 666 to 1. These factors thus enable FSLIC-insured institutions to increase significantly the risk exposure of the FSLIC without supporting the new liability base with adequate capital.

This risk exposure has been increased as a result of the DIA and changes to a number of state laws. These changes have significantly widened the investment powers of federal and state chartered institutions, permitting investment in areas in which insured institutions have little experience. In some states, statutory limits on the percentage of assets that an institution may commit to these new powers may not effectively require a prudent mix of these new, riskier investments with traditional, secured investments. In addition, the development of a nationwide market for insured deposits and other liabilities of insured institutions enables these institutions quickly and significantly to increase their deposits and other liabilities. The possibility of rapid growth of deposits and other liabilities has led some institutions to embark on ill-conceived plans of asset expansion, including high-risk investments made primarily for the purpose of generating fee income, without serious consideration of the safety of the underlying investments. Losses resulting from such practices cause a serious dissipation of the institution's net worth and are, ultimately, a significant risk to the FSLIC.

The Board began to address these problems in the rulemaking proceeding concerning the reserves and policies pertaining to insurance of accounts of *de novo* institutions (proposed: 48 FR 51270 (November 10, 1983); final: 48 FR 54320 (December 2, 1983)). In that proceeding, the Board found sufficient cause to require *de novo* institutions to have statutory reserves and net worth equal to at least seven percent of insured deposits and liabilities, respectively, for the first full fiscal year, with the requirement gradually decreasing to three percent of deposits and liabilities, respectively. The Board noted in the preambles of both the proposed and final rules that it would continue to review the reserve requirements and other areas of concern relating to existing institutions.

As a result of the changes to section 403(b) of the NHA made by the DIA, and for the reasons explained above, the Board is proposing to revise 12 CFR 563.13. First, the Board is proposing to eliminate the "statutory reserve" test of 12 CFR 563.13(a). The DIA amendment indicates that Congress no longer intends the Board to impose a capital adequacy standard based upon insured deposits. The Board believes that the minimum net-worth standard is a more reliable gauge of capital adequacy because it is calculated upon total liabilities, not merely insured deposits. This amendment would also alleviate the burden of calculating two measures of capital adequacy that are largely duplicative. Therefore, the Board is proposing to make compliance with the minimum net-worth requirement sufficient for compliance with the reserve requirement of section 403(b)

NHA. State requirements tied to the reserve requirement of section 403(b) would be met by compliance with the proposed net-worth requirement.

Second, the Board is proposing to impose a requirement to maintain net worth at three percent on any increase in liabilities after December 31, 1983. This action would limit leveraging of new liabilities to 33 to 1, which the Board, under existing circumstances, believes is adequate. All institutions (other than *de novo* institutions) would multiply increases in liabilities between December 31, 1983 and the date of calculation by three percent. *De novo* institutions that have not reached the three-percent requirement would continue to calculate minimum net worth as required under the existing rule, which does not permit five-year averaging. Institutions experiencing no growth in liabilities would not be adversely affected by the proposal. Institutions experiencing a decrease in liabilities after December 31, 1983, would be treated as if they had experienced no growth.

Third, the proposal would gradually eliminate five-year averaging and twenty-year phase-in. Five-year averaging would be eliminated by gradually reducing the number of fiscal years which could be averaged. For example, an institution may in the first fiscal year following September 30, 1984, average the liabilities in fiscal years 1983, 1982, 1981, 1980, and 1979. In the next fiscal year, an institution could average the fiscal years 1983 through 1980. In the third year, an institution could average fiscal years 1983 through 1981. Finally, in the fourth year, an institution could average fiscal years 1983 and 1982. Thereafter, averaging would not be permitted. The twenty-year phase-in would be gradually eliminated by permitting qualified institutions to apply this procedure only to pre-December 31, 1983 levels of liabilities. Any increase in liabilities after that date would be multiplied by three percent. Institutions having received approval for instance of accounts prior to November 3, 1983, however, would continue to multiply three percent of pre-December 31, 1983 liabilities by a fraction the numerator of which is the number of consecutive years of insurance and the denominator of which is twenty, until the institution reaches the twentieth anniversary of insurance of accounts. Once all institutions insured prior to November 3, 1983 reach the twentieth anniversary of insurance of accounts, the phase-in would be entirely eliminated.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to institutions whose accounts are insured by the FSLIC.

3. *Impact of the proposed rule on small institutions.* The proposed rule would limit the leveraging ability of rapidly growing small institutions by imposing a three percent net worth requirement on any increase in liabilities after December 31, 1983, and by gradually eliminating five-year averaging and twenty-year phase-in in the calculation of minimum net-worth requirements.

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

5. *Alternatives to the proposed rules.* There are no alternatives to the elimination of techniques that understate the capital adequacy of small institutions that would be less burdensome than the proposal in addressing the concerns expressed in the supplementary information set forth above.

List of Subjects in 12 CFR Parts 561, 563

Insurance of accounts, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Parts 561, 563, 570 and 584 of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

§ 561.13 [Amended]

1. Amend § 561.13(a)(2) by removing the phrase "statutory-reserve or".

PART 563—OPERATIONS

2. Amend § 561.13 by removing the phrase "reserve requirements of paragraphs (a) and (b)" in the first sentence of paragraph (c)(1) and substituting the phrase "requirement of paragraph (b)"; by removing the phrase *"statutory reserve or"* in the heading of paragraph (d); by removing the phrase "the statutory reserve requirement set forth in paragraph (a) of this section or" in the first sentence of paragraph (d); by removing the phrase "or the statutory reserve requirement set out in paragraph (a)(2) of this section" from the first sentence of paragraph (e); by removing paragraph (g); and by revising paragraphs (a), (b) (2) and (5), and (f); as follows:

§ 561.13 Regulatory net-worth requirement.

(a) *Scope.* (1) This section sets forth the requirements for the maintenance of the regulatory net worth by all insured institutions. Compliance with the requirements of this section shall be considered to be compliance with the reserve requirements of section 403(b) of the National Housing Act (12 U.S.C. 1726(b)).

(2) Items previously credited to the predecessor Federal Insurance Reserve Account shall be designated "restricted retained earnings" in the list of items comprising the net-worth account, and shall be used only for absorption of losses. Items earmarked or otherwise designated but not credited to that Account may be designated as restricted retained earnings.

(b) *Net-worth requirement.* * * *

(2) *Minimum required amount.* (i) Except as provided in paragraph (b)2(ii) of this section, the minimum required net worth shall be calculated using the formulae set forth below for all fiscal years beginning after September 30, 1984: *Provided,* that if A minus B is less than zero, then an institution using the formulae shall treat A minus B as if it were equal to zero:

r = minimum regulatory net-worth requirement
A = total liabilities as of the date of calculation
B = total liabilities as of December 31, 1983
C = total liabilities as of the end of fiscal year 1983
D = total liabilities as of the end of fiscal year 1982
E = total liabilities as of the end of fiscal year 1981
F = total liabilities as of the end of fiscal year 1980
G = total liabilities as of the end of fiscal year 1979
X = three percent or, for institutions (other than *de novo* institutions) that have not reached the twentieth anniversary of insurance of accounts, three percent multiplied by a fraction of which the numerator is the number of consecutive years of insurance of accounts and the denominator is twenty.
Y = an amount equal to two percent of recourse liabilities resulting from the sale of any loan.
Z = an amount equal to twenty percent of the institution's scheduled items.

(*a*) for the first fiscal year beginning after Sept. 30: 1984:

$r=\{(A-B).03\}+\{((C+D+E+F+G)/5)\ X\}+Y+Z$

(*b*) for the second fiscal year beginning after Sept. 30: 1984:

$r=\{(A-B).03\}+\{((C+D+E+F)/4)\ X\}+Y+Z$

(*c*) for the third fiscal year beginning after Sept. 30: 1984:

$r=\{(A-B).03\}+\{((C+D+E)/3)\ X\}+Y+Z$

(*d*) For the fourth fiscal year beginning after Sept. 30, 1984:

$r=\{(A-B).03\}+\{((C+D)/2)\ X\}+Y+Z$

(*e*) For the fifth fiscal year beginning after Sept. 30, 1984, and for all fiscal years thereafter:

$r=\{(A-B).03\}+(CX)+Y+Z$

(ii) (*a*) Except as provided in paragraph (b)(2)(ii)(*b*) of this section, all *de novo* institutions shall have a minimum regulatory net worth equal to the sum of (*1*) an amount equal to two percent or recourse liabilities resulting from the sale of any loan; (*2*) an amount equal to twenty percent of the institution's scheduled items; and (*3*) an amount equal to seven percent of all liabilities of the institution, which shall decline by 100 basis points for each year following the beginning of the first full fiscal year until equal to five percent, and thereafter may be reduced to three percent upon the approval of the Principal Supervisory Agent.

(*b*) *De novo* institutions which elect to have their applications for insurance of accounts processed in accordance with the policy set forth in § 571.6(a)(2) of this Subchapter but which do not additionally qualify under § 571.6(a)(3), shall have a minimum regulatory net worth equal to the sum of (*1*) an amount equal to two percent of recourse liabilities resulting from the sale of any loan; (*2*) an amount equal to twenty percent of the institution's scheduled items; and (*3*) for the period between the commencement of operations and the beginning of the first full fiscal year and for three years following the beginning of the first full fiscal year, an amount equal to seven percent of all liabilities of the institution which thereafter may be reduced to five percent or, upon the approval of the Principal Supervisory Agent, to three percent.

(*c*) The Principal Supervisory Agent of the institution's Federal Home Loan Bank district is hereby delegated authority to approve a reduction to three percent, provided that the Agent does not take supervisory objection to the probable effect of such reduction on the institution's safe and sound operating condition. If approval is withheld, the institution may seek review and final decision by the Corporation.

* * * * *

(5) *Definitions.* For purposes of paragraph (b) of this section:

(i) The term "liabilities" shall include total assets, net of the following: loans in process, specific reserves, and deferred credits other than deferred taxes; minus net worth as defined by § 561.13 of this Subchapter.

(ii) The term "recourse liabilities" shall be defined as in § 561.8 of this Subchapter.

(iii) The term "*de novo* institution" means any savings and loan association, homestead association, cooperative bank or savings bank which has filed with the appropriate Federal Home Loan Bank an application for insurance of accounts, or an application to organize a Federal association, which was not approved prior to November 3, 1983, and the business of which has not been conducted previously under any charter.

* * * * *

(f) *Charging of losses to reserves.* Losses charged to reserves shall exhaust all net-worth accounts before constituting a charge against mutual capital certificates.

§ 563.7–4 [Amended]

3. Amend § 563.7–4(1)(2) (iv) and (v) by removing the phrase "statutory-reserve requirement or".

§ 563.8–1 [Amended]

4. Amend § 563.8–1(d)(1)(iv) by removing the phrase "or Federal insurance reserve".

5. Revise § 563.14 to read as follows:

§ 563.8–14 Payment of dividends.

No insured institution which has recognized losses of any kind chargeable to its net-worth account may pay dividends to insured members or other account holders, unless (1) its net-worth account, after deduction of such losses, is at least equal to the amount required under § 563.13(b)(2) of this Part, or (2) prior written approval is obtained from the Corporation. The Corporation hereby approves for any insured institution which, prior to the charging of such losses, has met the requirement of § 563.13(b)(2), the declaration of dividends to insured members or other account holders, if the insured institution provides not less than 25 percent of its net income (as defined in § 563c.12 of this Subchapter) for the affected distribution period to the restoration of its reserve capacity.

PART 570—BOARD RULINGS

§ 570.5 [Removed]

6. Remove § 570.5.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

§ 584.4 [Amended]

7. Amend § 584.4(g)(1)(iv) by removing the phrase "statutory reserve and".

(Secs. 401, 402, 403, 405, 48 Stat. 1225, 1256, 1257, as amended; 12 U.S.C. 1724, 1725, 1726, 1728. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84–4661 Filed 2–17–84; 8:45 am]

BILLING CODE 6720–01–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Regulatory Flexibility Act; Review of Existing Rules

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of review of existing rules.

SUMMARY: The Regulatory Flexibility Act requires the Commission and other Federal agencies to review all rules which were in existence on January 1, 1981, and which have a significant economic impact on a substantial number of small entities, including small businesses. The purpose of the review, which must be completed by December 31, 1990, is to determine whether the rules should be continued without change, or should be amended or revoked, consistent with the objectives of the agency, in order to minimize any impact which they may have on small businesses. The Commission continues its review of existing rules by soliciting comments on nine rules issued under provisions of the Federal Hazardous Substances Act. In prior notice the Commission solicited comments on 17 rules issued under the Consumer Product Safety Act, and on eight rules issued under the Flammable Fabrics Act. In the future, the Commission will solicit comments on rules issued under provisions of the Poison Prevention Packaging Act.

DATE: Interested persons are invited to submit written comments on any of the rules described in this notice on or before April 23, 1984.

ADDRESS: Comments and any accompanying material should be submitted to the Secretary, Consumer

Product Safety Commission, Washington, D.C. 20207, and titled "Regulatory Flexibility Act Review of FHSA Rules."

FOR FURTHER INFORMATION CONTACT: Allen F. Brauninger, Office of General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 492–6980. Inquiries from the press and broadcast media should be addressed to Lou Brott, Office of Public Affairs, telephone: (202) 634–7780.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) became effective on January 1, 1981, and generally requires all Federal agencies, including the Commission, to evaluate and take into consideration the impact of their rules on small entities, including small businesses.

Section 610(a) of the RFA (5 U.S.C. 610(a)) requires the Commission to review all rules which were in existence on January 1, 1981, and which have or will have a significant economic impact on a substantial number of small businesses. Section 610(a) of the RFA provides further that the purpose of this review shall be to determine whether those rules should be continued in effect without change, or should be amended or revoked, consistent with the objectives of the statutes administered by the Commission, to minimize any significant economic impact which they may have on a substantial number of small businesses. This review of existing rules must be completed by December 31, 1990. Section 610(a) also requires the Commission to review any rule issued after January 1, 1981, within 10 years of its issuance on a final basis.

Section 610(b) of the RFA (5 U.S.C. 610(b)) specifies that in the review of rules conducted in accordance with section 610, the Commission must consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible with State and local governmental rules; and

(5) The length of time since the rule has been evaluated, or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Plan for Review of Rules

Section 610(a) of the RFA also requires the Commission to publish in the **Federal Register** a plan for making the review of rules called for by that section. In the **Federal Register** of September 14, 1981 (46 FR 45621), the Commission published a plan for reviewing all regulations in existence on January 1, 1981, which have a significant economic impact on a substantial number of small businesses. That plan also set forth the schedule by which the Commission proposes to review rules issued after January 1, 1981, within ten years of their issuance on a final basis.

Section 610(c) of the RFA (5 U.S.C. 610(c)) requires that the Commission must publish in the **Federal Register** each year a list of the rules to be reviewed pursuant to section 610 during the next twelve months. That section requires further that the notice must include a brief description of each rule to be reviewed, the need for the rule and its legal basis, and invite public comment upon the rule.

By publication of this notice, the Commission announces that it is continuing its review of all rules in existence on January 1, 1981, which have a significant economic impact on a substantial number of small businesses by considering nine rules issued under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*).

In earlier notices published in the **Federal Register** of October 21, 1982 (47 FR 46861) and February 2, 1984 (49 FR 4103), the Commission solicited comments from all interested persons on rules issued under provisions of the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) and the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*). At a later date, the Commission will publish a notice in the **Federal Register** to solicit comments on existing rules issued under provisions of the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*).

Rules To Be Reviewed

In accordance with provisions of section 610(c) of the RFA, the Commission announces that during the next twelve months it will be reviewing the rules listed below for any significant economic impact which they may have on a substantial number of small businesses. As required by section 610(c) of the RFA, a brief description of each rule, the need for the rule, and its legal basis are set forth for each rule to be reviewed. All of these rules are published in Chapter II of Title 16 of the Code of Federal Regulations.

1. *Part 1500—Hazardous substances and articles; administration and enforcement regulations.* This part defines various terms used in the FHSA and sets forth procedural rules used by the Commission in the administration and enforcement of the FHSA. This part also prescribes methods for testing substances which are toxic, irritant or flammable, and contains test methods applicable to toys and children's articles for identifying sharp glass or metal edges, and for simulating use and abuse of such products intended for children of various ages. The regulations in this part also identify household products which contain or consist of hazardous substances; household products containing or consisting of hazardous substances which are banned from distribution in commerce; and toys or children's articles which are banned because they present a mechancial, electrical or thermal hazard. Additionally, the regulations in this part prescribe general and specific labeling requirements for household products subject to the provisions of the FHSA.

The regulations in this part are needed to implement, supplement and interpret provisions of the FHSA. They were issued under provisions of sections 2 through 5, 10, and 14, of the FHSA (15 U.S.C. 1261–1264, 1269, and 1273).

2. *Part 1501—Method for identifying toys and other articles intended for use by children under 3 years of age which present choking, aspiration or ingestion hazards because of small parts.* This rule prescribes the appartatus, procedure, and criteria for testing toys and other articles intended for children younger than three years old to determine if such products, or their detachable parts, present a choking, aspiration, or ingestion hazard because of small parts. The rule lists examples of the types of products subject to the test method in this part which are representative but not all-inclusive. It also exempts specific products from the small parts test.

The rule is needed to eliminate or reduce unreasonable risks of injury or illness to young children which might otherwise result from accidentially choking on, inhaling, or swallowing toys or articles intended for children younger than three years old, or parts from such toys or children's articles. The rule was issued under provisions of sections 2(f), 2(q), 2(s), and 3(e), and 10 of the FHSA (15 U.S.C. 1261, 1262, 1269).

3. *Part 1505—Requirements for electrically operated toys or other electrically operated articles intended for use by children.* This rule establishes requirements for the labeling, design, materials, and performance of electrically operated toys and children's articles. It is needed to eliminate or reduce personal injury or illness which might otherwise result from electrical shock, or from moving or heated parts of electrically operated toys and children's

articles. The rule was issued under provisions of sections 2(f), 2(r), 2(s), 2(t), and 3(e) of the FHSA (15 U.S.C. 1261, 1262).

4. *Part 1507—Fireworks devices.* This rule prescribes requirements for fireworks devices, other than firecrackers, which are not banned under any other provisions of the FHSA or any other rule issued under the FHSA. This rule prescribes requirements for the design, materials, and performance of fireworks. Any fireworks device which is subject to this rule and fails to comply with an applicable requirement is banned from interstate commerce.

This rule is needed to protect the public from risks of substantial personal injury or substantial illness which might otherwise result from the customary or reasonably foreseeable handling or use of fireworks devices. It was issued under provisions of section 2(q) of the FHSA (15 U.S.C. 1261) and section 710(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)).

5. *Part 1508—Requirements for full-size baby cribs.* This rule contains requirements for baby cribs intended for home use which have interior dimensions of approximately 28 inches wide by approximately 52 inches long. The rule sets forth requirements for the design, performance, materials and labeling of cribs which are subject to its provisions. Among its principal provisions are requirements that the distance between slats, spindles, crib rods, corner posts and similar components of a crib shall not be greater than 2⅜ inches, and that any cut-out design on an end panel or side panel of a crib shall not be in a configuration which could entrap the head or neck of a child occupying the crib. The rule also contains provisions applicable to certain items of hardware and to the finish and construction of cribs. It also requires that cribs must be accompanied with instructions for assembly.

The rule is needed to eliminate or reduce unreasonable risks of injury or illness which might otherwise result to children occupying full-size cribs. The rule was issued under provisions of sections 2(f), 2(q), 2(s), and 3(e) of the FHSA (15 U.S.C. 1261, 1262).

6. *Part 1509—Requirements for non-full-size baby cribs.* This rule establishes requirements for baby cribs intended for use in or around the home and for travel and other purposes which are smaller or larger than full-size cribs subject to the requirements of Part 1508. Certain products including mesh-sided cribs, cradles, and bassinets are excluded from the coverage of the requirements of Part 1509. The rule establishes requirements for the design, performance, materials, and labeling of non-full-size cribs which are similar, but not identical, to those for full-size cribs set forth in Part 1508.

The rule is needed to eliminate or reduce unreasonable risks of injury or illness which might otherwise result to children occupying full-size cribs. The rule was issued under provisions of sections 2(f), 2(q), 2(s), and 3(e) of the FHSA (15 U.S.C. 1261, 1262).

7. *Part 1510—Requirements for rattles.* This rule sets forth the apparatus, procedure, and criteria to be used for testing rattles to assure that they will not be capable of entering an infant's mouth and lodging in the throat. The rule defines the term "rattle," and lists certain products which are not included in this definition.

The rule is needed to eliminate or reduce unreasonable risks of choking and suffocation injuries associated with infants' rattles. The rule was issued under provisions of sections 2(f), 2(q), 2(s), and 3(e) of the FHSA (15 U.S.C. 1261, 1262).

8. *Part 1511—Requirements for pacifiers.* This rule establishes design and performance requirements for pacifiers to assure that they will not be capable of lodging in an infant's throat. The rule is needed to eliminate or reduce unreasonable risks of choking and suffocation injuries associated with infants' pacifiers. It was issued under provisions of sections 2(f), 2(q), 2(s), and 3(e) of the FHSA (15 U.S.C. 1261, 1262).

9. *Part 1512—Requirements for bicycles.* This rule establishes design and performance requirements for bicycles. The rules contain tests to measure the strength of the frame, front fork, and wheels; braking performance; and the structural integrity of the entire bicycle. The rule also establishes requirements for placement and performance of reflectors; for protective guards; and for labeling and assembly instructions.

The rule is needed to eliminate or reduce unreasonable risks of injury from fractures, lacerations, contusions, abrasions, and other causes associated with bicycles. The rule was issued under provisions of sections 2(f), 2(q), 2(s), and 3(e) of the FHSA (15 U.S.C. 1261, 1262).

Previous Review of Rules

The Commission reviewed two of the rules described above in 1980, in accordance with provisions of former section 27(m) of the Consumer Product Safety Act (15 U.S.C. 2076(m), repealed by the Consumer Product Safety Amendments of 1981, Pub. L. 97-35; 95 Stat. 703). The rules reviewed in 1980 were those banning vinyl chloride used as an aerosol propellant, set forth in § 1500.17(a)(10) of Part 1500; and requirements applicable to fireworks established by § 1500.17(a) (8) and (9) of Part 1500 and by Part 1507. A copy of the Commission's report concerning this earlier rule review is available in the Commission's public reading room, 8th floor, 1111 18th Street NW., Washington, D.C. or by calling the Office of the Secretary (301) 492-6800.

All interested parties are invited to submit written comments concerning any or all of the nine rules issued under the FHSA and described in this notice to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. To be considered in this rule review proceeding, comments must be received not later than April 23, 1984.

Dated: February 16, 1984.

Sheldon D. Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 84-4675 Filed 2-21-84; 8:45 am]

BILLING CODE 6355-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6547]

Proposed Flood Elevation Determination; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Rockdale County, Georgia, previously published at 48 FR 34084 on July 27, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0230.

SUPPLEMENTARY INFORMATION: As result of a recent engineering analysis, the Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Rockdale County, Georgia previously published at 48 FR 34084 on July 27, 1983, in accordance with Section 110 of the Flood Disaster Protection Act

of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

The description of the location of the Base Flood Elevation Determination on Honey Creek and the existing and modified BFE Determinations which read "About 0.4 mile upstream of Turner Hill Road," "783", "783" should be corrected to read "Just upstream of Turner Hill Road," "777", "778".

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The listings appears correctly as follows:

State	City/town/county	Source of flooding	Location	Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Georgia	(Uninc.) Rockdale County	Honey Creek	Just upstream of Turner Hill Road	*777	*778

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: February 10, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–4625 Filed 2–21–84; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 65

[Docket No. FEMA–6538]

Proposed Flood Elevation Determination; Indiana; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Emergency Management Agency has published a listing which included the proposed flood elevation determination for the Unincorporated Areas of Brown County, Indiana. This notice will serve to delete Brown County, Indiana from that list.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0230.

SUPPLEMENTARY INFORMATION: As a result of a recent engineering analysis, the Federal Emergency Management Agency has determined that the notice of proposed flood elevation determination for the Unincorporated Areas of Brown County, Indiana, published at 48 FR 30719, on July 5, 1983, should be deleted.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: February 10, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–4648 Filed 2–21–84; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

[Docket No. 83–38]

Inquiry and Intent To Review Regulation of Ports and Marine Terminal Operators; Hearings

AGENCY: Federal Maritime Commission.

ACTION: Notice of oral hearings and procedure.

SUMMARY: The purpose of this Notice is to announce hearings to provide further opportunity for comment pursuant to the Notice of Inquiry published at 48 FR 41199 (September 14, 1983); to designate issues to be addressed at the hearings; and to establish a deadline for receipt of any additional written comments which the parties to this proceeding may wish to submit.

FOR FURTHER INFORMATION CONTACT: Robert Setrakian, Commissioner, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523–5721.

SUPPLEMENTARY INFORMATION: By Notice of Inquiry dated September 14, 1983 (48 FR 41199), the Commission solicited public comment on a number of issues regarding regulation of ports and marine terminal operators. The comment period expired on December 12, 1983, and a Synopsis of the comments received has been prepared and made publicly available.

It has since been determined that in order to provide further opportunity for the parties to this proceeding to present and clarify their views and to respond to opposing views, oral hearings will be held as follows:

March 12–14, 1984

5th Circuit Court of Appeals Bldg., East Courtroom, Room 223, 600 Camp Street, New Orleans, Louisiana 70130

March 26–29, 1984

Federal Building, Ceremonial Courtroom—19th Floor, 450 Golden Gate Avenue, San Francisco, California 94102

April 9–13, 1984

U.S. Customs Service Building, 6 World Trade Center, 7th Floor, Room 770, New York, New York 10048

The hearing sites are in the cities of the Commission's three major district offices. Gulf area interests are invited to attend the New Orleans hearing; Pacific Coast interests the San Francisco hearing; and Atlantic and Great Lakes interests and national associations the New York hearing. However, if parties wish to attend a different hearing for convenience or because of scheduling conflicts, they will certainly be accommodated.

The issues to be addressed track those in the Notice of Inquiry, with a few omissions. Generally, the hearings will concentrate on those issues raised in the Notice which proved most controversial, as indicated in the Synopsis. In the area of terminal tariffs (Part I), comment shall be focused on the need for tariff filings; whether the most appropriate tariff repository is the FMC, the port or terminal operator itself, or a third party; and whether the Commission should require copies of tariffs to be made available at the terminal operator's place of business for a fee, either as a supplement to, or a substitute for, filings with the Commission.[1]

[1] The issue of publishing charges in local shipping or commercial publications (Notice, Question 4) need not be addressed.

In the area of marine terminal agreements (Part I), comment will be invited on the types of agreements which might be exempted from filing and/or approval requirements, either pursuant to the "Classes" enumerated in the Notice or by any alternative approaches, including explanations of the reasons and the expected impact of such exemptions. Again, interested parties are referred to the Synopsis for an indication of the views and positions appropriate for further oral comment. Also, more extensive comment is invited on the possibility of the agreement approval process being used only when antitrust immunity is sought by the agreement's proponents.[2]

On Parts II and III, involving antitrust immunity and future Commission regulation, the full range of issues raised in the Notice and in the responses as reflected in the Synopsis may be addressed. In light of the likely passage of the Shipping Act of 1984, participants in the oral hearings may wish to address the implementation of the new legislation as it affects port and marine terminal operators.

While participation at hearings is not mandatory, it is hoped that the parties who provided written responses to the Notice will take the opportunity to expound on and answer questions concerning their submissions and to respond to those of the other parties. Interested parties are urged to arrange the date and time in which they wish to address the Inquiry Officer at their regional hearing. The Inquiry Officer's address and telephone number is set forth above in the headings of this Notice.

Finally, additional written submissions (original and 15 copies) will be accepted until May 14, 1984, which is 30 days after the close of the final oral hearings. Additional Written comments are not necessarily solicited, but this opportunity is provided for those who wish to respond in writing to prior written and oral comments, and also for the benefit of those who lacked the time or resources to respond as they would have liked by the December 12, 1983 deadline for initial comments.

Robert Setrakian,

Inquiry Officer.

[FR Doc. 84-4832 Filed 2-21-84; 8:45 am]

BILLING CODE 6730-01-M

[2] "Class 4" exemptions and Question 9 of the Inquiry need not be addressed further.

DEPARTMENT OF COMMERCE

48 CFR Ch. 13

Aquisition Regulations; Establishment of Chapter

AGENCY: Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Department of Commerce (DOC) issues this proposed rule to be known as the Commerce Acquisition Regulation (CAR). This proposed rule would be codified as Chapter 13 of Title 48 of the Code of Federal Regulations. The purpose of the CAR is to implement and supplement the Federal Acquisition Regulation (FAR) which has been separately promulgated by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration as Chapter 1 of Title 48 of the Code of Federal Regulations. The FAR was published in the September 19, 1983 issue of the **Federal Register.** The FAR is promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms.

The FAR will supersede the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation. Civilian agency implementations of the Federal Procurement Regulations will become obsolete as a result of the promulgation of the FAR. For this reason, the Department of Commerce Procurement Regulations (DOCPR), codified as Chapter 13 of Title 41 of the Code of Federal Regulations, and all related implementation and supplementation thereof will be superseded by the final rule expected to result from this proposed rule, upon the effective date of the final rule.

The intended effect of the FAR is to simplify the Federal procurement process by adopting a uniform regulation for all agencies. The uniform regulation will eliminate the confusion caused contractors by differing policies among the various Federal agencies. The intended effect of the CAR is to implement the FAR where required and to supplement the FAR in areas where thee is no FAR coverage of Commerce unique policy.

DATE: To be considered, written comments should be submitted not later than March 23, 1984.

ADDRESS: Comments should be addressed to: Hugh L. Brennan, Director, Procurement and Federal Assistance, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: John Dammeyer, Office of Procurement Management, U.S. Department of Commerce (202) 377-4248.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act
III. Public Comments

I. Background

The policies and procedures of the Federal government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies have traditionally developed their own contracting procedures with limited attention to uniformity among agencies. The result of this is a system of procurement policies which vary from agency to agency and cause confusion within the contracting community. In 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation to be known as the Federal Acquisition Regulation (FAR).

The FAR is to be codified as Chapter 1 of Title 48 of the Code of Federal Regulations with a scheduled effective date of April 1, 1984. The FAR was published in the September 19, 1983, edition of the **Federal Register.**

Because of differing statutory authorities among Federal agencies and because as a practical matter the FAR cannot contain all the procedural details of how to implement a particular policy, the FAR authorizies the agencies to issue implementing regulations. The regulations promulgated here represent the Department's necessary implementation and supplementation of the FAR.

Lack of coverage of a particular topic in the CAR means that the Department accepts the FAR coverage of the topic without need for further implementation.

II. Procedural Requirements

A. Executive Order 12291

This proposed rule is exempt from the provisions of Executive Order 12291. The application of this exemption to this

proposed rule has been agreed to by the Office of Management and Budget.

B. Regulatory Flexibility Act

DOC certifies that this proposed rule will not have a significant economic impact on a substantial number of small entitities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

The information collection and recordkeeping requirements imposed on the public by this proposed rulemaking will be requested of the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

D. National Environmental Policy Act

DOC has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et. seq. 1976) and the regulations (40 CFR Parts 1500–1508) and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

III. Public Comments

Interested person are invited to participate in this rulemaking by submitting comments on the proposed CAR to the address listed in the "ADDRESS" section of this notice. All comments received will be available for public inspection in Room 6414, Office of Procurement Management, U.S. Department of Commerce, 14th & Constitution Ave., NW, Washington, D.C., between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. All written comments received by March 23, 1984 will be considered prior to publication of the proposed amendment as a final rule.

Comments on the collection of information requirements contained in the proposed rule should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Tim Sprehe, Desk Officer for the Department of Commerce, Washington, D.C. 20503.

List of Subjects in 48 CFR Ch. 13

Governemnt procurement, Commerce acquisition regulations.

For the reasons set forth in the preamble, Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C. February 16, 1984.

Hugh L. Brennan,

Director, Office of Procurement and Federal Assistance.

Title 48 of the CFR is amended by establishing Chapter 13 to read as follows:

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SUBCHAPTER A—GENERAL

PART 1301—GENERAL

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Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1301.1—Purpose, Authority, Issuance

1301.100 Scope of subpart.

This subpart states the relationship of the Commerce Acquisition Regulation (CAR) to the Federal Acquisition Regulation (FAR). This subpart also explains the purpose, authority and issuance of the CAR.

1301.101 Purpose.

(a) Chapter 13 of Title 48 of the Code of Federal Regulations shall be known as the Commerce Acquisition Regulation (CAR).

(b) The purpose of the CAR is to implement and supplement the FAR within the Department of Commerce. Since the CAR is intended to supplement and implement the FAR without paraphrasing or duplicating FAR language, the CAR should be read in relation to the FAR.

1301.102 Authority.

The CAR is prescribed by the Department Procurement Executive pursuant to a delegation initiating from the Secretary of Commerce in accordance with the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law and regulation.

1301.103 Applicability.

The FAR and CAR apply to all acquisitions within the Department of Commerce.

1301.104 Issuance.

1301.104-1 Publication and code arrangement.

(a) The CAR is published in (1) daily issues of the **Federal Register**, (2) cumulative form in the Code of Federal Regulations (CFR), and (3) a separate loose-leaf edition.

(b) The CAR is issued as Chapter 13 of title 48 of the CFR.

1301.104.2 Arrangement of regulations.

(a) *General.* The CAR is divided into the same parts, subparts, sections, subsections and paragraphs as the FAR. When FAR coverage is adequate by itself, there will be no corresponding CAR coverage.

(b) *Numbering.* Where the CAR implements the FAR, the CAR part, subpart, section or further subdivision will be numbered the same as the corresponding FAR part, subpart, section, or further subdivision except that the CAR implementation will be preceded by a 13 or 130 so that there are four numbers to the left of the first decimal. Where the CAR supplements the FAR, supplementing material will be assigned the number 70 and above. The placement of the sequence of 70 numbers in relation to the decimal point will depend on what division of the FAR is supplemented.

(c) *References and citations.*

(2) This regulation may be referred to as the Commerce Acquisition Regulation (CAR).

(3) References to FAR materials will include FAR and the identifying number, for example, FAR 1.402. Reference to CAR materials will consist of the identifying number, for example 1301.402.

1301.104-3 Copies.

(a) Copies of the CAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402. Requests should reference the CAR as Chapter 13 of Title 48 of the Code of Federal Regulations.

(b) Loose-leaf copies of the CAR are distributed within the Department by the Office of Procurement Management, Office of Procurement and Federal Assistance.

Subpart 1301.2—Administration

1301.201-1 The two FAR councils.

(b) The Department representative to the Civilian Agency Acquisition Council will be a staff member of the Office of Procurement and Federal Assistance who will be appointed for that purpose by the Procurement Executive. The Office of Procurement and Federal Assistance (OPFA) will be responsible for coordinating and advocating Department proposed revisions to the FAR.

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.

(a) The Procurement Executive will issue Department acquisition policy and procedure in the CAR when necessary to implement or supplement the FAR.

(b) The Office of Procurement and Federal Assistance may issue internal Department guidance in the form of Procurement Letters, policy manuals, or model operating procedures.

(c) Heads of Contracting Activities may issue internal operating procedures for their contracting activities. These internal operating procedures may include routine office procedures, procedures which implement policy prescribed by the Office of Procurement and Federal Assistance, and the dissemination of guidance or information to program officials who may be affected by the policy. Heads of Contracting Activities shall not prescribe policy and shall not issue any procedures which appear to be in conflict with policy issued by the Office of Procurement and Federal Assistance.

1301.303 Codification and public participation.

(a) The CAR is published as Chapter 13 of Title 48 of the Code of Federal Regulations.

(b) Public participation procedure is described in 1301.5.

Subpart 1301.4—Deviations

1301.402 Policy.

Requests for authority to deviate from the provisions of the FAR or the CAR shall be submitted to the Office of Procurement and Federal Assistance as soon as the need to deviate is known. Requests shall be in writing and reasonably describe the deviation desired, the reason for the deviation, and the time by which a decision is needed. When timing is crucial, the written request should be preceded by a telephone request to the Office of Procurement and Federal Assistance. Requests for both individual deviations and class deviations shall be considered and decided upon by the Procurement Executive. When requests are received for class deviations from FAR provisions, the Procurement Executive shall consult with the chairperson of the Civilian Agency Acquisition Council. (see FAR 1.404). Individuals responsible for unauthorized deviations may be considered for disciplinary action as described in the Department Administrative Order On *Discipline* (DAO 202-751).

Subpart 1301.5—Agency and Public Participation

1301.501 Solicitation of agency and public views.

The initial CAR was published with a notice of proposed rulemaking inviting public comments, review and analysis of comments received, and publication of a final rule. The final rule included a discussion of the public comments received and described any changes made as a result of the comments. A future issuance under this title may or may not require publication for public participation, depending on whether the issuance is a significant revision of the FAR which alters the substantive meaning of any coverage in the FAR having a substantive impact on the public. Each future issuance will be considered on a case-by-case basis. If a future issuance is determined by the Procurement Executive to be a significant revision of the FAR, that issuance shall be published for public participation. Any issuance under this title shall be done by or with the concurrence of the Office of Procurement and Federal Assistance.

Subpart 1301.6—Contracting Authority and Responsibilities

1301.601 General.

Contracting authority vests with the Secretary of Commerce. The Secretary has delegated this authority to the Assistant Secretary for Administration who has delegated this authority, with the right to redelegate, to the Procurement Executive, as prescribed in the Department Administrative Order on *Procurement Authority* (DAO 208-2).

1301.601-70 Responsibilities of heads of contracting activities.

Heads of Contracting Activities shall be responsible for directing and

maintaining efficient contract operations within their contracting activities. Adequate controls shall be established to assure compliance with applicable laws, regulations, and policy guidance from the Office of Procurement and Federal Assistance. Heads of Contracting Activities shall provide the necessary coordination and cooperation required for periodic oversight reviews conducted by the Office of Procurement and Federal Assistance.

1301.601–71 Responsibilities of the Office of Procurement and Federal Assistance.

The Office of Procurement and Federal Assistance shall establish Department-wide policy for contracting activities. Also, the Office of Procurement and Federal Assistance shall conduct periodic oversight reviews of Department contracting activities to assure that Department contracting activities are operating efficiently and in accordance with the provisions of the FAR, the CAR, and OPFA policy.

1301.603 Selection, appointment, and termination of appointment.

The Department's system for selection, appointment and termination of appointment of contracting officers is contained in the *Contracting Officer Certification/Warrant Program.*

1301.603–70 Ratification of unauthorized contract awards.

(a) The Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. When these unauthorized acts are discovered they shall be immediately reported to the Head of the Contracting Activity concerned. The Head of the Contracting Activity shall:

(1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;

(2) Inform the person who made the unauthorized commitment of the seriousness of the act and the possible consequences;

(3) Ensure receipt of documentation detailing the actions taken and the reasons for those actions; and

(4) Decide whether ratification of the unauthorized act is proper, and take appropriate action.

1301.603–71 Responsibility of other Government personnel.

The responsibility of other Government personnel is generally described in the Department's procurement requisitioning guides and the Department Administrative Order on the *Procurement Planning System* (DAO 208–15). These documents are designed for internal Department use.

PART 1302—DEFINITIONS OF WORDS AND TERMS

Subpart 1302.1—Definitions

1302.1–1 Definitions.

Acquisition Executive: The Acquisition Executive, as defined in OMB Circular A–109, means the Assistant Secretary for Administration. The Acquisition Executive monitors the development of major systems and reviews their progress through the major systems acquisition process.

Department: When used in the CAR, Department means the Department of Commerce.

Head of the Agency means the Secretary of Commerce and those designees which have been delegated the authority to act for the Secretary of Commerce in specifically delegated areas. The head of the agency for procurement matters is the Assistant Secretary for Administration. This authority for procurement matters has been further delegated to the Procurement Executive pursuant to the Department Administrative Order on *Procurement Authority* (DAO 208–2). Where the term "Agency head or designee" is used, that term shall mean the Procurement Executive unless otherwise indicated in the CAR.

Head of the contracting activity means the official who has overall responsibility for managing the contracting activity, as more fully described in the Department Administrative Order on *Procurement Authority* (DAO 208–2).

Head of the contracting office means the official who heads the office that awards and administers contracts, as more fully described in the Department Administrative Order on *Procurement Authority* (DAO 208–2).

Procurement Executive means the official delegated broad procurement authority under the Department Administrative Order on *Procurement Authority* (DAO 208–2). Duties of the Procurement Executive include the following:

(a) Prescribe and publish Department procurement policies, regulations and procedures;

(b) Enter into, make determinations and decisions and take other actions, consistent with appropriate policies, regulations and procedures with respect to purchases, contracts, leases, sales, agreements and other transactions, except those required by law or regulation to be made by other authority;

(c) Designate contracting officers and representatives thereof;

(d) Establish clear lines of contracting authority;

(e) Exercise priorities authority concerning the internal procurement needs of the Department, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.), Department of Defense Delegation of Priorities Authority, dated October 21, 1958, and applicable policies and regulations;

(f) Evaluate and monitor the Department's procurement system performance;

(g) Manage and enhance career development of the procurement work force;

(h) Examine, in coordination with the OFPP, the procurement system to determine specific areas where Government-wide performance standards should be established and applied and participate in the development of Government-wide procurement policies, regulations and standards;

(i) Determine areas for Department unique standard and develop unique Department-wide standards;

(j) Be the advocate for competition; and

(k) Certify to the Department head that the procurement system meets approved standards.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2).

PART 1303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1303.1—Safeguards

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1303.101–3 Agency regulations.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302–70 Reporting requirements.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department

Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1303.1—Safeguards

1303.1—Safeguards

1303.101–3 Agency regulations.

The agency rules implementing Executive Order 11222 are contained in the Department Administrative Order on *Employee Responsibilities and Conduct* (DAO 202–735).

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Suspected violations of the Gratuities clause shall be reported to the head of the contracting office in writing detailing the circumstances. The head of the contracting office will evaluate the report and if the allegations appear to support a violation the matter will be referred to the Procurement Executive for disposition.

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302–70 Reporting requirements.

(a) Executive Order 12430 revoked the requirement of Executive Order 10936 to submit a report to the Attorney General on identical bids.

(b) Suspected anti-competitive practices and antitrust law violations as described in FAR 3.301 and FAR 3.303 shall be reported to the general counsel through the Head of the Contracting Activity. A copy of the report shall be sent to the Procurement Executive concurrently with the submission to the general counsel.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Suspected violations of the Covenant Against Contingent Fees shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207–10).

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207–10).

PART 1305—PUBLICIZING CONTRACT ACTIONS

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

The authority to approve the publication of paid advertisements in newspapers was delegated to the heads of contracting offices.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.)

Subchapter B—Acquisition Planning

PART 1307—ACQUISITION PLANNING

Subpart 1307.1—Acquisition Plans

Sec.
1307.103 Agency-head responsibilities.

Subpart 1307.3—Contractor Versus Government Performance

1307.307 Appeals.

Subpart 1307.4—Equipment Lease or Purchase

1307.401 Acquisition consideration.

Authority: Federal Property and Administrative Service Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1307.1—Acquisition Plans

1307.103 Agency-head responsibilities.

The Department's procedures for acquisition planning are contained in the Department Administrative Order on the *Procurement Planning System* (DAO 208–15) and the Department Administrative Order on *Management of Automatic Data Processing Resources* (DAO 212–1).

Subpart 1307.3—Contractor Versus Government Performance

1307.307 Appeals.

The Department's appeals procedures of the cost-comparison is contained in the Department Administrative Order on the *Acquisition of Commercial or Industrial Products and Services Needed by the Department of Commerce* (DAO 201–41).

Subpart 1307.4—Equipment Lease or Purchase

1307.401 Acquisition considerations.

The contracting officer shall decide whether to acquire equipment by lease or purchase.

PART 1308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1308.1—Excess Personal Property

Sec.
1308.101 Definition.

Subpart 1308.8—Acquisition of Printing and Related Services

1308.802 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1308.1—Excess Personal Property

1308.101 Definition.

The authority to designate personal property as excess is delegated to the Director of the Office of Property and Building Management or designee.

Subpart 1308.8—Acquisition of Printing and Related Services

1308.802 Policy.

The Director of the Office of Information Services is central printing authority for liaison with the Joint Committee on Printing and the Public Printer.

PART 1309—CONTRACTOR QUALIFICATIONS

Subpart 1309.4—Debarment, Suspension and Ineligibility

Sec.
1309.403 Definitions.
1309.470 Procedures for debarment, suspension and ineligibility.
1309.470–1 Scope of section.
1309.470–2 Consolidated list of debarred, suspended, and ineligible contractors.
1309.470–3 Agency records.
1309.470–4 Procedures on debarment.
1309.470–5 Period of debarment.
1309.470–6 Scope of debarment.
1309.470–7 Procedures on suspension.
1309.470–8 Period of suspension.
1309.470–9 Scope of suspension.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1309.4—Debarment, Suspension and Ineligibility

1309.403 Definitions.

"Debarring official" means the Procurement Executive.

"Suspension official" means the Procurement Executive.

1309.470 Procedures for debarment, suspension and ineligibility.

1309.470-1 Scope of section.

This section prescribes Department procedures for: (a) Distribution, use and maintenance of GSA's consolidated list of debarred, suspended, and ineligible contractors; and (b) debarment and suspension of Government contractors.

1309.470-2 Consolidated list of debarred, suspended, and ineligible contractors.

The following procedures apply to GSA's consolidated list of debarred, suspended, and ineligible contractors:

(a) The Procurement Executive shall notify GSA of any Department imposed debarments or suspensions of a contractor or any modification or rescission of these actions.

(b) GSA's consolidated list shall be distributed to the Department contracting activities by the Office of Small and Disadvantaged Business Utilization (OSDBU).

(c) Preliminary and ordinary inquiries concerning GSA's consolidated list should be made from the contracting office to the agency or authority which took the action. When unique or complex matters are concerned, the contracting office shall also inform the Office of Procurement and Federal Assistance.

(d) Personnel in all contracting offices should be familiar with GSA's consolidated list and all updates.

1309.470-3 Agency records.

The Office of Small and Disadvantaged Business Utilization (OSDBU) shall maintain records relating to each suspension or debarment action taken by the Department.

1309.470-4 Procedures on debarment.

(a) *Investigation and referral.* Personnel in all contracting offices shall be familiar with the causes for debarment (FAR 9.406-2) and shall be alert to information which indicates that a contractor (to which the Department plans to award a contract) has committed an action which is a cause for debarment. If a contractor not on the list has committed an action which is a cause for debarment, heads of contracting offices shall determine which other agencies award contracts to this firm and if any of these agencies have initiated, or plan to initiate debarment actions.

(1) If another agency is considering debarment, the Head of the Contracting Activity shall promptly report this fact and recommend action to the Procurement Executive after discussions with general counsel. Within 30 days after receipt of notice, the Procurement Executive shall decide whether it is necessary for the Department to proceed with a debarment action.

(2) If another agency is not considering debarment, the Head of the Contracting Activity shall promptly report this fact and recommend action to the Procurement Executive after discussions with general counsel. The Head of the Contracting Activity shall attach all available documenting evidence to support the recommendation. The mere existence of a cause for debarment does not require that a contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors shall be considered in recommendations for action and any debarment decision.

(b) *Decision making process.* Upon receipt of a debarment recommendation, the Procurement Executive shall review all available evidence and shall promptly determine whether or not to proceed with debarment. The Procurement Executive may refer the matter to the Office of Inspector General for further investigation. After completion of any additional review or investigations, the Procurement Executive shall make a written determination. A copy of this determination shall be promptly sent to the initiating contracting office. (See FAR 9.406-3(b).)

(c) Notice of proposal to debar (See FAR 9.406-3(c).)

(d) Debarring official's decision (See FAR 9.406-3(d).)

(e) Notice of debarring official's decision (See FAR 9.406-3(e).)

1309.470-5 Period of debarment.

(See FAR 9.406-4.)

1309.470-6 Scope of debarment.

(See FAR 9.406-5.)

1309.470-7 Procedures on suspension.

(a) *Investigation and referral.* Heads of contracting offices may recommend suspension of a firm or individual based on the causes for suspension listed in FAR 9.407-2. The procedures for investigation and referral of suspension are the same as those contained in 1309.470-4(a). When using that subsection for suspension procedures, substitute the word "suspension" for the word "debarment".

(b) *Decision making process.* Procedures for the decision making process of suspensions are the same as those contained in 1309.470-4(b) except that an initial decision by the Procurement Executive regarding debarment results in a proposal to debar, whereas the initial decision for suspension results in immediate suspension. (See FAR 9.407-3(b).)

(c) Notice of suspension (See FAR 9.407-3(c).)

(d) Suspending official's decision (See FAR 9.407-3(d).)

1309.470-8 Period of suspension.

(See FAR 9.407-4.)

1309.470-9 Scope of suspension.

(See FAR 9.407-5.)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1313—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1313.1—General

1313.106-70 Technical evaluation and written or oral discussion procedure for negotiated small purchases.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1313.1—General

1313.106-70 Technical evaluation and written or oral discussion procedure for negotiated small purchases.

(a) *Technical evaluation.* A technical evaluation may be requested for negotiated small purchases, at the discretion of the contracting officer. The manner and extent of the technical evaluation shall be determined by the contracting officer, except that the technical evaluation shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

(b) *Written or oral discussions.* Written or oral discussions may be conducted with all qualified sources which submit quotations for negotiated small purchases. The contracting officer shall determine the manner, extent, and need for written or oral discussions, except that discussions shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

PART 1314—FORMAL ADVERTISING

Subpart 1314.4—Opening of Bids and Award of Contract

1314.406-3 Other mistakes disclosed before award.

1314.407-8 Protests against award.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1314.4—Opening of Bids and Award of Contract

1314.406–3 Other mistakes disclosed before award.

(e) The authority to make the determinations listed in FAR 14.406–3(e) concerning mistakes in bids was delegated to the Heads of Contracting Activities.

1314.407–8 Protests against award.

(a) *General.*

(1) Protests must be received within ten working days after the basis for protest is known or should have been known unless good cause is shown to extend the time limit. However, protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing time for receipt of initial proposals shall be filed prior to bid opening or the closing time for receipt of initial proposals.

(2) The Department-wide contact point for protests to GAO against an award of a contract is the Office of the Assistant General Counsel for Administration. This office shall represent the Department before the GAO on protests against award. This office shall furnish all necessary correspondence concerning protests to GAO, including the Department's report in response to the protest to GAO.

(b) *Protests before award.* The head of the contracting office is the designated official to approve award of a contract before a protest against award is resolved.

PART 1315—CONTRACTING BY NEGOTIATION

Subpart 1315.3—Determinations and Findings to Justify Negotiation

1315.307 Signatory authority.

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations

1315.413–2 Alternate II.

Subpart 1315.5—Unsolicited Proposals

1315.501 Definitions.
1315.504 Advance guidance.
1315.506 Agency procedures.

Subpart 1315.6—Source Selection

1315.612 Formal source selection.

Subpart 1315.8—Price Negotiation

1315.804–3 Exemptions from or waiver of submission of certified cost or pricing data.
1315.805–70 Audit as an aid in proposal analysis.

Subpart 1315.9—Profit

1315.902 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1315.3—Determinations and Findings to Justify Negotiation

1315.307 Signatory authority.

Determinations and findings for contracts negotiated under 41 U.S.C. 252(c)(11) shall be signed by the Assistant Secretary for Administration when more than $25,000 will be obligated. Determinations and findings for contracts negotiated under 41 U.S.C. 252(c)(11) which obligate $25,000 or less may be signed by the head of the contracting office.

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations

1315.413–2 Alternate II.

The procedures described in FAR 15.413–2 may be used if approved by the Head of the Contracting Activity or designee.

Subpart 1315.5—Unsolicited Proposals

1315.501 Definitions.

"Coordinating office" means the head of the contracting office.

1315.504 Advance guidance.

(a) All Department employees should encourage inquiries on Department missions, needs and methods of operation and refer inquiries to the program office concerned with the subject matter of the inquiry. Any inquiry which could reasonably lead to a procurement action should be promptly coordinated with the appropriate head of the contracting office.

(b) When it appears that a person or firm is interested in making a proposal, that person or firm should be referred to the head of the contracting office concerned who will provide instructions for submission of an unsolicited proposal.

(c) Heads of contracting offices shall provide instructions for submission of unsolicited proposals to each person or firm which expresses an interest in submitting an unsolicited proposal.

1315.506 Agency procedures.

(a) The head of the contracting office is the contact point to coordinate the receipt and handling of unsolicited proposals.

(b) The head of the contracting office shall promptly acknowledge receipt of unsolicited proposals by letter.

(c) The head of the contracting office shall comply with FAR 5.509 concerning the limited use of data.

(d) Promptly after receipt of an unsolicited proposal which conforms to this regulation, the head of the contracting office shall forward a copy of the proposal along with instructions for technical evaluation of unsolicited proposals to the appropriate program office for technical evaluation. If more than one Department activity has an interest in a proposal, copies of the proposal shall be circulated to each interested office.

(e) Program offices receiving unsolicited proposals for evaluation shall conduct the evaluation in accordance with this Subpart 1315.5, FAR Subpart 15.5, and any additional guidance provided by the Office of Procurement and Federal Assistance.

(f) Program offices shall complete the recommendation and evaluations and submit them along with all copies of the unsolicited proposal, and a written justification for a noncompetitive procurement action if appropriate, to the head of the appropriate contracting office within 60 days of receipt of a proposal for evaluation.

(g) No part of an unsolicited proposal shall be duplicated or circulated outside of the evaluation office. Each unsolicited proposal shall be closely safeguarded to prevent disclosure of any restricted data. Only heads of contracting offices or their designees may duplicate unsolicited proposals and then only to facilitate evaluation by more than one technical evaluation office.

Subpart 1315.6—Source Selection

1315.612 Formal Source selection.

(e) *Safeguarding information.* The contracting officer is designated as the releasing authority for source selection information.

Subpart 1315.8—Price Negotiation

1315.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(i) *Waiver for exceptional cases.* The head of the contracting office is delegated the authority to waive the requirement for submission of certified cost or pricing data in exceptional cases.

1315.805–70 Audit as an aid in proposal analysis.

(a) Preaward audit services include:

(1) The submission of an auditor's report which sets forth the results of review and analysis of cost data submitted by contractors as part of their pricing proposals, reviews of contractors' accounting systems, recorded contract costs, and other related matters; and

(2) Personal consultation and advice regarding the use of the auditor's report in the negotiation and award of a contract.

(b) Requests for audit services should be sent to the External Audit Division, Office of Inspector General, Herbert C. Hoover Building.

(c) Preaward audits should not be routinely requested for actions below the dollar threshold specified in FAR 15.805–5. Before requesting audits below the dollar threshold, the contracting office should consider using price or cost analysis techniques, recent audit reports, price negotiation memoranda, and other relevant information regarding the offer to establish the reasonableness of price. However, audits should be considered for proposals below the specified dollar thresholds in the following circumstances:

(1) The contracting officer has reason to doubt the adequacy of the contractor's accounting policies or cost systems;

(2) The contractor has substantially changed its methods or levels of operation;

(3) Previous unfavorable experience indicates that the contractor's estimating, accounting, or purchasing methods may be unreliable; or

(4) The proposal concerns a new product for which cost experience is lacking.

Subpart 1315.9—Profit

1315.902 Policy.

(a) Except as provided in (b) and (c) below, a structured approach for determining profit or fee prenegotiation objectives shall be used in the negotiation of all contracts, subcontracts, and contract modifications above $100,000 where adequate price competition does not exist. A structured approach for determining profit or fee prenegotiation objectives may be used at lower dollar thresholds.

(b) Regardless of whether price competition exists, the structured approach for determining profit or fee prenegotiation objectives is not required for negotiation of contracts, subcontracts, and contract modifications for the following:

(1) Architect—engineering contracts;

(2) Management contracts for operation or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee contracts; and

(7) Unusual pricing situations where the structured approach has been determined to be unsuitable. This exception must be justified in writing and signed by the head of the contracting office.

(c) In many circumstances, an examination of cost and profits is not required. Where adequate price competition exists and in other situations where cost analysis is not required (e.g., established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation), contracts may be awarded without regard to the amount of profit involved.

(d) Additional internal instruction on the use of the structured approach can be found in Procurement Letters or policy manuals issued by the Office of Procurement and Federal Assistance.

PART 1316—TYPES OF CONTRACTS

Subpart 1316.3—Cost-Reimbursement Contracts

1316.306 Cost-plus-fixed-fee contracts.

Subpart 1316.4—Incentive Contracts

1316.404–2 Cost-plus-award-fee contracts.

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.603–3 Limitations.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1316.3—Cost-Reimbursement Contracts

1316.306 Cost-plus-fixed-fee contracts.

The contracting officer is delegated the authority to sign a determination and findings establishing the basis for application of the statutory fee limitation.

Subpart 1316.4—Incentive Contracts

1316.404–2 Cost-plus-award-fee contracts.

(d) *Fee determination plans.* The award fee determination plan shall include both technical performance (including scheduling as appropriate) and business management consideration tailored to the needs of the particular situation. The goals and evaluation criteria should be results-oriented. The award fee should concentrate on the end product of the contract. However, equal employment opportunity, small business programs, and functional management areas, such as safety and security, cannot be disregarded and may be appropriately part of the criteria upon which to base the award fee. Specific goals or objectives should be established in relation to each performance evaluation criterion against which contractor performance is measured.

Subpart 1316–6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.603–3 Limitations.

The head of the contracting office is the designated official for executing a determination and findings that no contract other than a letter contract is suitable.

PART 1317—SPECIAL CONTRACTING METHODS

Subpart 1317.4—Leader Company Contracting

1317.402 Limitations.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1317.4—Leader Company Contracting

1317.402 Limitations.

Leader company contracting is authorized by the Department only when approved in writing by the Procurement Executive.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

The head of the contracting office is delegated the authority to determine if it is in the Government's interest to place orders for supplies or services with another agency.

Subchapter D—Socioeconomic Programs

PART 1319—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1319.2—Policies

1319.201 General policy.

(c) The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for administering the Department's small and small disadvantaged business programs.

(d) The Head of the Contracting Activity or designee shall appoint a small business and disadvantaged

business specialist for the contracting activity concerned.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.)

PART 1322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1322.1—Basic Labor Policies

1322.103–4 Approvals.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.608–4 Award pending final determination.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1322.1—Basic Labor Policies

1322.103–4 Approvals.

The contracting officer is the designated official for approving the total dollar amount and use of overtime for contract performance.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.608–4 Award pending final determination.

If the contracting officer determines that award must be made before a determination of the offeror's eligibility as a manufacturer or regular dealer by DOL or SBA, that decision must be approved by the head of the contracting office.

PART 1324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1324.1—Protection of Individual Privacy

1324.103 Procedures.

Subpart 1324.2—Freedom of Information Act

1324.202 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1324.1—Protection of Individual Privacy

1324.103 Procedures.

(b)(2) The Department's procedures for implementing the Privacy Act are contained in 15 CFR COMMERCE AND FOREIGN TRADE, SUBTITLE A, Part 4b (Privacy Act) and the Department Administrative Order on *Implementing the Privacy Act of 1974* (DAO 205–15).

Subpart 1324.2—Freedom of Information Act

1324.202 Policy.

The Department's procedures for implementing the Freedom of Information Act (the Act) are contained in 15 CFR COMMERCE AND FOREIGN TRADE, SUBTITLE A, PART 4 (Public Information) and the Department Administrative Order on *Public Information* (DAO 205–12).

PART 1325—FOREIGN ACQUISITION

Subpart 1325.1—Buy American Act—Supplies

1325.102 Policy.

(a)(4) The contracting officer is authorized to make the written determination described by FAR 25.102(a)(4). If the contract is estimated to exceed $1 million, the Head of the Contracting Activity must approve the determination.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.)

Subchapter E—General Contracting Requirements

PART 1331—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1331.2—Contracts With Commercial Organizations

1331.205–32 Precontract costs.

The payment of precontract costs must be approved in writing by the Head of the Contracting Activity.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.)

PART 1332—CONTRACT FINANCING

Subpart 1332.1—General

1332.102 Description of contract financing methods.

Subpart 1332.4—Advance Payments

1332.402 General.

Subpart 1332.6—Contract Debts

1332.605 Responsibilities and cooperation among Government officials.

1332.616 Compromise actions.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1332.1—General

1332.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized for use as a payment method under Department contracts and subcontracts for construction, alteration, repair, ship construction, ship alteration, and ship repair. For all other contracts, progress payments shall be based on costs except when the head of the contracting office determines that progress payments based on costs cannot be practically employed. In those cases, progress payments based on a percentage or stage of completion may be authorized when the head of the contracting office also determines that adequate safeguards are provided for the administration of those payments.

Subpart 1332.4—Advance Payments

1332.402 General.

(e)(1) The Head of the Contracting Activity is delegated the authority to make findings and determinations and to approve contract terms concerning any advance payments, regardless of dollar amount.

(e)(2) Before authorizing advance payments, the Head of the Contracting Activity shall coordinate with the servicing finance office.

Subpart 1332.6—Contract Debts

1332.605 Responsibilities and cooperation among Government officials.

(b) The contracting officer has primary responsibility for determining the amount of contract debt and notifying the servicing finance office of the debt due to the Government. The servicing finance office has primary responsibility for debt collection and reporting of all contract debts under the Debt Collection Act of 1982.

1332.616 Compromise actions.

The Department's policy on compromise actions is contained in the Department Administrative Order on *Collection and Other Disposition of Claims of the United States* (DAO 203–23).

PART 1333—DISPUTES AND APPEALS

Subpart 1333.70—Department Board of Contract Appeals

1333.70–1 Department Board of Contract Appeals.

The General Services Administration (GSA) Board of Contract Appeals serves as the Board of Contract Appeals for the Department.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.)

Subchapter F—Special Categories of Contracting

PART 1334—MAJOR SYSTEM ACQUISITION

1334.003 Responsibilities.

(a) The Department's policy, procedures and responsibilities for implementing OMB Circular A–109 are contained in the Department Administrative Order on *Major System Acquisitions for the Department of Commerce* (DAO 208–3).

(b) When the Secretary approves a mission need, the Acquisition Executive shall designate the servicing contracting office for all phases of the major systems acquisition.

(c) Within 60 days after identification of the servicing contracting office, the program manager shall complete and submit the overall acquisition plan to the Acquisition Executive for approval. The servicing contracting office shall assist in developing the overall acquisition plan. The overall acquisition plan shall include for each of the major systems acquisition phases (i.e., exploration of alternative systems, competitive demonstrations, full-scale development and production) a schedule for completion of at least each of the following functions:

(1) Solicitation development in terms of mission need;

(2) Advance publicity for the initial, exploration phase;

(3) Issuance of requests for proposals (RFPs);

(4) Closing dates for RFPs; and

(5) Evaluation and award.

(d) The program manager shall submit all changes in the overall acquisition plan to the Acquisition Executive along with a written explanation of the need for each change. (See 1307.1 for acquisition planning, in general).

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.)

PART 1336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1336.2—Special Aspects of Contracting for Construction

1336.209 Construction contracts with architect-engineer firms.

Subpart 1336.6—Architect-Engineer Services

1336.602–4 Selection authority.
1336.602–5 Short selection processes for contracts not to exceed $10,000.
1336.603 Collecting data on and appraising firms' qualifications.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208.2.

Subpart 1336.2—Special Aspects of Contracting for Construction

1336.209 Construction contracts with architect-engineer firms.

The head of the contracting office is delegated the authority to approve the exceptional circumstances of awarding a contract for construction of a project to the firm that designed the project. Any approval of this type of award must be justified in writing and signed by the head of the contracting office.

Subpart 1336.6—Architect-Engineer Services

1336.602–4 Selection authority.

(a) The Head of the Contracting Activity is the designated selection authority for architect-engineer service contracts over the small purchase dollar threshold.

1336.602–5 Short selection processes for contracts not to exceed $10,000.

Both short selection processes prescribed in FAR 36.602–5 may be used for contracts not to exceed $10,000. However, in either case the contracting officer shall review the report, approve it and commence negotiations or return it for appropriate revision.

1336.603 Collecting data on and appraising firms' qualifications.

(a) *Establishing offices.* The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for Department-wide receipt and maintenance of data on firms wishing to be considered for architect-engineer service contracts.

PART 1337—SERVICE CONTRACTING

Subpart 1337.2—Consulting Services

1337.202 General.
1337.205 Management controls.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208.2.

Subpart 1337.2—Consulting Services

1337.202 General.

The Department's contracts for consulting and related services are governed by FAR 37.2.

1337.205 Management controls.

(b) The Department's management controls for acquisition of consulting and related services are contained in FAR 37.2.

Subchapter G—Contract Management

PART 1342—CONTRACT ADMINISTRATION

Subpart 1342.1—Interagency Contract Administration and Audit Services

1342.102–70 Post award audit reviews.

(a) Generally, the final invoice shall not be approved until a close-out audit has been performed and all outstanding issues have been negotiated or resolved on the following types of contracts of $100,000 and above:

(1) Cost-reimbursement type contracts;

(2) The cost-reimbursement portion of fixed-price contracts;

(3) Letter contracts which provide for reimbursement of costs;

(4) Time and materials contracts; and

(5) Labor-hour contracts.

(b) Even though the $100,000 postaward audit threshold generally applies, an audit may be requested regardless of the dollar amount when the contracting officer determines that an audit is justified under one of the following circumstances:

(1) There is some evidence of fraud or waste;

(2) The contractor's performance under the contract has been questionable;

(3) The contractor had a high incidence of unallowable costs under a previous contract;

(4) The contract is with a newly established firm, or a firm which has just begun dealing with the Government.

(c) All requests for audit services and all relevant documents shall be sent to the address listed in 1315.805–70(b). To ensure receipt and planned action on audit requests, all requests should include a request for confirmation of receipt of the request and the date planned for delivery of the audit report.

(d) See the Department's *Model Procedures for Closeout of Completed Contracts* for further information on audits, including desk audits for contracts of less than $100,000, and waiver of the need for post award audits.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.)

PART 1345—GOVERNMENT PROPERTY

Subpart 1345.1—General

1345.102 Policy.

The Department's policy and procedures on government property are contained in the *Property Management Policy Manual*, the *Property Management Procedure Handbook*, and the Department Administrative Order on *Property Management* (DAO 208–17).

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.)

Subchapter H—Clauses and Forms

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1352.0—General

1352.000 Scope of part.
1352.001 General policy.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.)

Subpart 1352.0—General

1352.000 Scope of part.

This part implements and supplements FAR Part 52 by prescribing specific modifications, alterations, and deviations to FAR solicitation provisions and contract clauses for Department—wide use.

1352.001 General policy.

The Depatment's policy is to use the FAR and CAR prescribed solicitation provisions and contract clauses unless specific authority for deviations has been obtained. (See 1301.4 for authority to deviate.) The use of uniform solicitation provisions and contract clauses should: provide a less burdensome way for potential contractors to respond to the Government's request for information concerning the evaluation of bids and proposals; expedite solicitation and contract preparation; and facilitate contract negotiation, administration and review. Each solicitation which incorporates contract clauses or solicitation provisions which deviate from those prescribed by the FAR and the CAR must be submitted to the Office of Procurement and Federal Assistance for prior review. The Office of Procurement and Federal Assistance will coordinate requests for approval of these solicitations by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1980 and 5 CFR Part 1320.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Contracting officers within the Department shall incorporate solicitation provisions and contract clauses by reference in solicitations and contracts to the maximum extent provided by applicable law and regulation. Incorporation by reference is the listing only by title, regulatory citation, and date of the provision or clause rather than the full text. The full text of the referenced solicitation provision or contract clause is contained in the Code of Federal Regulations (CFR); Chapter 1 of Title 48 for FAR provisions and clauses; and Chapter 13 ot Title 48 for CAR provisions and clauses.

PART 1353—FORMS

1353.000 Scope of part.

Subpart 1353.1-General

1353.103 Exceptions.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.
1353.204 Administrative matters.
1353.204–2 Contract reporting (CD 338).
1353.232 Contract financing.
1353.232–2 (CD–45).

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.)

1353.000 Scope of part.

This part supplements FAR Part 53 by prescribing specific exceptions to FAR prescribed forms for Departmentwide use.

Subpart 1353.1-General

1353.103 Exceptions.

The Department's policy is to use the FAR and CAR prescribed forms unless prior specific authority for exceptions or alterations has been obtained. Requests for exceptions to FAR or CAR forms shall be submitted to the Office of Procurement and Federal Assistance in the form prescribed by FAR 53.103 (See 1301.4 for authority to deviate).

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.

This subpart prescribes forms for Departmentwide use which are exceptions to FAR prescribed forms. This subpart is arranged by subject matter, in the same order and keyed to the parts of the FAR or CAR in which the form use requirements are addressed.

1353.204 Administrative matters.

1353.204–2 Contract reporting (CD 338).

(a) CD 338 (9/82) FPDS Code Sheet. CD 338 is prescribed for Departmentwide use in reporting individual contract actions above the small purchase dollar threshold, in lieu of SF 279.

1353.232 Contract financing.

1353.232–2 (CD 45).

CD 45 (3/76) Requisitioning Form. CD 45 is prescribed for Departmentwide use in requesting action from the servicing contract office. This form is the vehicle for administrative approvals, clearances, and certification of availability of adequate funds as specified in FAR 32.702.

This Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 3510-25-M

Appendix A-Forms

BATCH NUMBER

FORM CD-338
(REV. 9-82)

U.S. DEPARTMENT OF COMMERCE

FEDERAL PROCUREMENT DATA SYSTEM CODE SHEET

DE2 [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] Contract Number (5-19) (Order Number)
Oper. U. FY C O TT Sequential Number

5-6 Oper. Unit Procured For, Table 1, 7-8 FY issued, 9-10 P or C Off., Table 1, 11 - TranType - Table 1A (DOC Proc. Data System Handbook.), 12-16 - Sequential No. 5 digits. (12 may be alpha for OS and NBS only). Left justified zero filled (e.g., 00012), 17-19 Leave blank.

DE3 [ ][ ][ ][ ] Mod. No. (20-23) **For Mods.** - Use a sequential No. to identify 1st., 2nd., 3rd., etc. mod. to parent DOC contracts or to modify delivery orders against DOC or other agency contracts. Begin at right and leave unneeded spaces blank. On original contract leave blank.

DE4 [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] Contract Number (24-38) (See DOC Proc. Data System Handbook.)

DE6 [ ][ ][ ][ ] Effective Date of Award (44-47) Use 2 digits for Month
CY MO

DE7 [ ] Type Data Entry (48) 0 - Original Record, 1 - Reversing Record, 2 - Correcting Record (See DOC Proc. Data System Handbook for clarification)

DE8 [ ][ ][ ] Report Period FY–Qtr. (49-51) For Reversing or Correcting Report enter for current fiscal year. For Qtr. use 1 - 4.

Foreign Countries. For other Country Codes See ANS A39.27–1976. (NBS LC 1067–1).

Australia	AU	China (Taiwan)	TW	India	IN
Belgium	BE	Finland	FI	Iran	IR
Brazil	BR	France	FR	Israel	IL
Canada	CA	Germany, Federal Republic of	DE	Italy	IT
Chile	CL	Greece	GR	Japan	JP
Korea, Republic of	KR	Sweden	SE		
Mexico	MX	Switzerland	CH		
Netherlands	NL	Thailand	TH		
New Zealand	NZ	Union of Soviet Socialist Republics	SU		
Norway	NO	United Kingdom	GB		
Philippines	PH	Venezuela	VE		

DE10 [ ][ ][ ][ ][ ][ ][ ] Principal Place of Performance (61-67)
State or Country (61-62) City or Place (County) (63-67)
See FIPS CODE 55 (ANS X3.47)

DE11 $ [ ][ ][ ][ ][ ][ ][ ][ ] Total Dollars Obligated or Deobligated (68-75) (Round to nearest dollar)

DE14 [ ] Kind of Procurement Action (79) 1 - New Letter Contract. 2 - Definitive Contract Superceding Letter Contract. 3 - New Definitive Contract. 4 - Order under DOC Contract. 5 - Modification. 6 - GSA Supply Schedule. 7 - Order Under Another Agency Contract. 8 - Termination for Cause. 9 - Termination for Convenience.

DE16 [ ] Labor Surplus Area (81) 1 - Labor Surplus Area – No Preference. 3 - Labor Surplus Area – Tie Bid Preference. 4 - (Reserved – Do Not Use). 5 - Not a Labor Surplus Area Preference Award; 6 - Combined Small Business/Partial Labor Surplus Area Set-Aside Preference. 7 - Total Labor Surplus/Small Business Set-Aside Preference (P.L. 95-89). 8 - Total Labor Surplus Set-Aside Preference (P.L. 95-89)

DE17 [ ] Consultant Type Award (82) 1 - Yes 2 - No

DE18 [ ][ ][ ][ ] Prod./Service Code (83-86) See DOC Proc. Data System Handbook, Encl. E, Appendix I

DE19 [ ] Procurement Method (87) •1 - Two-step Formal Advertising, 2 - Other Formal Advertising, 3 - Negotiated Competitive, 4 - Negotiated Noncompetitive, 5 - Directed Proc. for Foreign Govts. If codes 1 or 2 are used, then DE20 -Extent of Competition and DE21 - Negotiation Authority do not apply and entries must be left blank.

DE20 [ ][ ] Extent of Competition (88-89)
Competitive Negotiated: A1 - Small Business Total Set-Aside, A2 - Small Business Partial Set-Aside, A3 - Labor Surplus Set-Aside, A4 - Labor Surplus/Small Business Total Set-Aside, A9 - Other Negotiated Competitive.
Non-Competitive Negotiated: B1 - Buy Indian, B2-8(a) Program; B3 - Follow-on After Competition, B9 - Other Negotiated Non-Competitive.

DE21 [ ][ ][ ] Negotiation Authority (90-92)
C01 - National Emergency
C02 - Public Exigency
C03 - Purchases not more than $10,000
C04 - Personal or Professional Services
C05 - Services of Educational Institutions
C06 - Purchases Outside U.S.
C07 - Medicine or Medical Supplies
C08 - Supplies Purchased for Authorized Resale
C09 - Perishable or Non-Perishable Subsistence
C10 - Impractical to Secure Competition by Formal Advertising
C11 - Experimental, Developmental, Test or Research
C12 - Classified Purchases
C13 - Technical Equipment Requiring Standardization and Interchangeability of Parts
C14 - Negotiation after Advertising
C15 - Otherwise Authorized by Law

DE23 [ ][ ] Type of Business (94-95)
A1 - Small Business-Disadvantaged 8(a)
A2 - Small Business-Owned by Minority Group
A3 - Other Small Business
B1 - Large Minority Business
B2 - Other Large Business
C1 - Non-Profit-Private Educational Organization
C2 - Non-Profit-Hospital
C3 - Non-Profit-Research Institution, Foundation, Laboratory
C4 - Other Non-Profit Institutions
D1 - State/Local Government-Educational
D2 - State/Local Government-Hospital
D3 - State/Local Government-Research Organization
D4 - Other State/Local
E1 - Procured and Used Outside U.S./Possessions
E2 - Other Procurements Outside U.S./Possessions

DE24 [ ] Women Owned Business (96) 0 - Exempt 1 - Yes 2 - No

DE26 [ ][ ][ ][ ] Estimated Completion Date (98-101) Use 2 digits for Month.
CY MO

Name of Preparer

Telephone Number | Date Prepared

USCOMM-DC 1978

To Be Completed For Original Transactions Over $10,000

DE9 [ ][ ][ ][ ][ ][ ][ ][ ][ ] Contractor Establishment Code (52-60) See Duns CIC Conversion File

DE12 [ ] Subject to Stat. Req. (76)

A - Walsh-Healy Act, Manufacturer.
B - Walsh-Healy Act, Regular Dealer.
C - Service Contract Act.
D - Davis-Bacon Act.
E - Not subject to above statutory requirements.

DE13A [ ] Affirmative Action Plan on File (77) 1 - Yes 2 - No

DE13B [ ] Previously Held Contract Subject to Affirmative Action Program Requirements (78) 1 - Yes 2 - No

DE15 [ ] Multi-Year Procurement (80) 1 - Yes 2 - No

DE22 [ ] Type of Contract/Modification (93)

A - Fixed Price Redetermination
J - Firm Fixed Price
K - Fixed Price Economic Price Adjustment
L - Fixed Price Incentive
R - Cost Plus Award Fee
S - Cost No Fee
T - Cost Sharing
U - Cost Plus Fixed Fee
V - Cost Plus Incentive Fee
Y - Time and Materials
Z - Labor Hours

DE25 [ ] Cost Accounting Standards Clause (97) Required 1 - Yes 2 - No

DE27A [ ] No. of Offerors Offering Foreign Item (102) 0-9 (if none, enter 0, if nine or more, enter 9)

DE27B [ ][ ] Percent Difference (103/104) 01-99 Percent difference between award price and low bidder offering foreign end item computed before application of Buy American Act differential.

DE27C [ ][ ] Country of Manufacturer

DE28 _____ Reserved FPDC (107-120)

DE29 [ ] Government Furnished Property (121) 1 - Yes 2 - No

DE30 [ ] Handicapped Set Aside (See 7(h) and 15(c) SBA Act) (122) 1 - Yes 2 - No

DE31 [ ][ ][ ][ ][ ][ ] Reserved OADPM Use (123-128)

DE32 [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] Reserved OADPM Use (129-144)

Optional

Contractor Name: _____

Address: _____

_____

FORM CD-45
(REV. 3-76)

U. S. DEPARTMENT OF COMMERCE

SUPPLY, EQUIPMENT OR SERVICE ORDER

FOR:

2. CHECK APPROPRIATE BLOCK

☐ PROCUREMENT ☐ OTHER *(Specify)*

1. THE NUMBER SHOWN IN BLOCK 5 MUST APPEAR ON ALL SHIPMENTS AND/OR DOCUMENTS RELATING TO THIS ORDER

3. REQUISITIONER DOCUMENT NO	4. BUREAU CONTROL NO.	5. PURCHASE ORDER NO.
6. ISSUED TO:	7. DESTINATION SHIP TO	
8. ACCOUNTING CODE	9. QUOTATION REF. OR CONTRACT NO.	10. DISCOUNT TERMS
11. DELIVERY F.O.B.	12. GOVT. B/L NO.	13. DELIVERY DATE
14. FUNDS AVAILABLE *(Budget Office)*	14a. STATION	

ITEM NUMBER 15. LINE NO	16. DO NOT USE	17. DESCRIPTION	18. QUANTITY	19. UNIT	20. ESTIMATED TOTAL COST	21. ACTUAL UNIT PRICE	21. ACTUAL TOTAL COST

22. SIGNATURE OF REQUISITIONER / TITLE	DATE	23. SIGNATURE APPROVING OFFICER / TITLE	DATE

24. ☐ ACCOUNTABLE PROPERTY	INITIALS	25. ☐ NOT AVAILABLE-BUREAU STOCK/ EXCESS	INITIALS	26. SIGNATURE-BUREAU CONTROL OFFICER	27. ☐ NOT AVAILABLE-DEPARTMENT STOCK/EXCESS	INITIALS

28. APPROVAL	DATE	29. PURCHASING AGENT	DATE

30. **RECEIPT ACTION** - Quantities shown in Column 18 above have been received and accepted, except as follows: *(If additional space is needed, use reverse side.)*

31. SIGNATURE-RECEIVING OFFICER	DATE	32. PROPERTY CONTROL NO.	☐ TRADE-IN ☐ RECEIVING REPORT

33. **SEND INVOICES IN DUPLICATE TO:** →

[FR Doc. 84-4726 Filed 2-21-84; 8:45 am]

1

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC–43 (Sub–14)]

Lease and Interchange Regulations (Master Leases)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition seeking authorization for the use of "master" lease agreements by authorized carriers, the Commission proposes to modify its existing leasing regulations, set forth at 49 CFR Part 1057: (1) To allow the use by motor carriers engaged in trip leasing of a "master" lease covering more than one unit of equipment so long as such lease complies with all of the provisions of the leasing rules; (2) to require that a copy of the "master" lease be carried in the equipment while it is in the possession of the lessee; and (3) to allow required receipts to be transmitted by mail, telegraph, or other similar means of communication. Existing regulations require that when a lessor transfers equipment to a lessee on a trip lease, the lessee must prepare and execute a receipt for the equipment at the transfer point. Potential benefits of this proposal include reduced deadheading, increased availability of trip leasing, and a generally more efficient and economical method of operation.

DATES: Comments are due on April 9, 1984.

ADDRESS: The orginal and, if possible, 15 copies, of comments should be sent to: Ex Parte No. MC–43 (Sub–14), Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Judy Ann Barnes, 202 275–7962
or
Mary A. Kelly, 202 275–7292.

SUPPLEMENTARY INFORMATION: The Common Carrier Conference—Irregular Route (CC–IR) has filed a petition seeking authorization for the use of "master" lease agreements by authorized carriers.[1] The proposed additions to the lease and interchange regulations would authorize the use of a master lease in connection with trip-lease operations, and would allow carriers to issue the initiating receipt other than "in person". CCR–IR states that since the passage of the Motor Carrier Act of 1980, its members have expanded the scope of their operating authorities, with increasing reliance on back-haul operations by the trip-leasing of equipment. Existing regulations require that when a lessor transfers equipment to a lessee on a trip lease, the lessee must prepare and execute a receipt for the equipment at the transfer point. This, it contends, decreases efficiencies and operating economies because a carrier may have to travel additional, unnecessary miles in order to have a lease executed. In addition, all information regarding the particular trip must be reported on the lease. Petitioner contends that these regulations virtually preclude the execution of lawful trip lease unless an agent of the lessee is present at the transfer point to prepare the required receipt and additional information. Petitioner argues that it is frequently more economical for a carrier to return its equipment empty rather than attempt to work out a trip-lease arrangement.

CCC–IR states that the proposed modification of the leasing rules would not result in unsafe operations. Copies of the "master" trip lease would travel with the involved equipment and would specify the possession and control of the equipment. The Conference also points out that the Department of Transportation (DOT) has initiated a proposed rulemaking seeking a modification of 49 CFR 396.3(c) to allow waiver of the vehicle inspection requirement when the involved equipment has undergone a DOT inspection within the 30-day period preceding issuance of the receipt.[2]

PCC and NAWGA strongly support the proposals of the Conference with one modification. They request that the proposed § 1057.22(e) be modified to cover not only authorized carriers, but private carriers and all other entities leasing equipment pursuant to this section. Both parties cite the decision in Ex Parte No. MC–43 (Sub-No. 12), *Leasing Rules Modifications*,[3] allowing private carriers to trip lease equipment and personnel to regulated carriers, as justification for this additional modification.

Potential benefits of this proposal include reduced deadheading, increased availability of trip leasing, and a generally more efficient and economical method of operation. The rules proposed by petitioner would restrict the use of "master" leases to operations using more than one unit of equipment. We will delete that restriction from the published proposal. While most "master leases" may cover operations involving more than one unit of equipment we find no reason to include such restrictive language. We think the benefits attainable here should also be made available to carriers which operate only one piece of equipment. In addition, we will delete the phrase "If the equipment is being leased for periods of less than 30 days" from petitioner's proposed change to § 1057.11(d)(1). That phrase is already contained in that specific regulation and need not be repeated.[4]

Finally, a definition of a "master" lease should be included in the regulations. Common usage would imply that this be defined as a standard lease agreement containing all necessary items, but leaving blank the specific information with respect to each particular trip lease. The freight and documents prepared for the specific movement would contain this latter information. We solicit comments on the proper definition of "master" lease, as well as all other aspects of this proposal.

The proposed rules are set forth in the appendix to this notice.

Regulatory Flexibility Analysis

We certify that this action will not have a significant economic impact on a substantial number of small entities. To the extent the proposal would affect small entities, the effects, although not significant, would be largely positive since the proposed rules will allow a more efficient and simplified process for leasing equipment on a trip-lease basis. This will benefit both small carriers, as well as owner-operators, by providing a more efficient and economical method for conducting trip-lease operations.

Energy and Environmental Considerations

This proposal should not have any significant adverse impact upon the quality of the human environment or

[1] Statements in support of the petition have been filed by the Private Carrier Conference (PCC) and the National-American Wholesale Grocers' Association (NAWGA).

[2] BMCS Docket No. MC–48–1. Final rules in Docket No. MC–48–1; Amdt. No. 81–14 were published in the **Federal Register**, 48 FR 55866 (December 16, 1983).

[3] 132 M.C.C. 927 (1982); 47 FR 53858 (November 30, 1982). The effective date has been stayed pending judicial review by order of the U.S. Court of Appeals for the Eleventh Circuit on April 25, 1983 (No. 82–8787).

[4] Our proposal in Ex Parte No. MC–43 (Sub-No. 15), *Elimination of Thirty Day Leasing Requirement*, 48 FR 39251 (August 30, 1983), eliminates this same phrase from the existing section 1057.11(d)(1) as a consequence of eliminating the distinction between trip and permanent leases. If the proposal in that proceeding is ultimately adopted, it would not prevent the use of "master" leases as noticed in this case.

conservation of energy resources. We anticipate that further action by the Commission in this proceeding will improve motor carrier operating efficiencies and reduce empty mileage, thus contributing to the conservation of energy resources. Comments on these issues are also invited.

List of Subjects in 49 CFR Part 1057

Motor carriers.

This notice is issued under the authority contained in 49 U.S.C. 10321 and 11107, and at 5 U.S.C. 553.

Decided: February 6, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Acting Secretary.

Appendix

We propose to amend Title 49 CFR Part 1057 as follows:

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

§ 1057.11 [Amended]

1. Section 1057.11 would be amended by adding a sentence to the end of paragraphs (b)(1) and (d)(1) to read as follows:

§ 1057.11 General leasing requirements.

* * * * *

(b) * * *

(1) * * *

The receipt identified in this section may be transmitted by mail, telegraph, or other similar means of communication.

* * * * *

(d) * * *

(1) * * *

This provision is complied with by having a copy of a "master" lease in the unit of equipment in question and where the balance of documentation called for by this paragraph is included in the freight documents prepared for the specific movement.

* * * * *

2. Section 1057.22 is amended by adding a new paragraph (c)(4) to read as follows:

§ 1057.22 Exemption for private carrier trip leasing and trip leasing between authorized carriers.

* * * * *

(c) * * *

(4) Nothing in this section shall prohibit the use, by authorized carriers, private carriers, and all other entities conducting lease operations pursuant to this section, of a "master" lease so long as a copy of that "master" lease is carried in the equipment while it is in the possession of the lessee, and so long as that "master" lease complies with the provisions of this section and receipts are exchanged in accordance with § 1057.11(b), and so long as records of the equipment are prepared and maintained in accordance with § 1057.11(d).

[FR Doc. 84-4629 Filed 2-21-84; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 49, No. 36
Wednesday, February 22, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking, Committee on Regulation; Public Meetings

Correction

In FR Doc. 84–4162, appearing on page 5979, in the issue of Thursday, February 16, 1984, in the First Column in the second complete paragraph, "February 6, 1984" should read "March 6, 1984".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Uinta National Forest Grazing Advisory Board; Meeting

The Uinta National Forest Grazing Advisory Board will meet at 9:30 a.m. on Friday, March 23, 1984, at the Rodeway Inn, 1292 South University Avenue, Provo, Utah 84601.

The purpose of this meeting is to review current allotment management plans and the planning and utilization of the Range Betterment Fund.

The meeting will be open to the public. Persons who wish to attend should notify Ward F. Savage, Uinta National Forest Supervisor's Office, P.O. Box 1428, Provo, UT 84601, telephone (801) 377–5780. Written statements may be filed with the Board before and after the meeting.

Dated: February 13, 1984.

Norman E. Corbridge,

Acting Forest Supervisor.

[FR Doc. 84–4684 Filed 2–21–84; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Grayson County Road Bank Critical Area Treatment RC&D Measure, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soild Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Grayson County Road Bank Critical Area Treatment RC&D Measure, Grayson County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240 telephone 804–771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for seeding eroding road banks in Grayson County, Virginia. The planned work will include the establishment of 26 acres of permanent vegetative cover by hydro-seeding and mulching.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: February 10, 1984.

Manly S. Wilder,

State Conservationlist.

[FR Doc. 84–4659 Filed 2–1–84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Order 84–2–49]

Application of Silvas Air Lines, Inc. for Certificates of Public Convenience and Necessity

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting a Fitness Investigation of Silvas Air Lines, Inc., Order 84–2–49, Docket.

SUMMARY: The Board is issuing an order instituting a fitness investigation of Silvas Air Lines, Inc.

DATES: Persons wishing to file requests for additional evidence or petitions to intervene in the *Silvas Air Lines, Inc. Fitness Investigation* shall file their petitions in Docket 41996 by March 2, 1984.

In addition, copies of such filings should be served on: Silvas Air Lines, Inc., MSJ Financial Corporation, the Secretary of Transportation, and the Attorney General.

Service will also be required on any other person filing petitions.

ADDRESS: Objections and answers to objections should be filed in Docket 41805, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Sherry L. Kinland, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–2–49 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–2–49 to that address.

By the Bureau of Domestic Aviation:
February 13, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84–4569 Filed 2–21–84; 8:45 am]
BILLING CODE 6320–01–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et seq.); Week Ended February 10, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Feb. 6, 1984	41978	Trinidad and Tobago (BWIA International) Airways Corporation, c/o Michael Goldman, Verner, Liipfert, Bernhard and McPherson, Suite 1000, 1660 L Street, N.W., Washington, D.C. 20036. Application of Trinidad and Tobago (BWIA International) Airways requests renewal of its authority, contained in its permit, issued pursuant to Order 82–1–7, to operate over Routes 4, 5 and 6, so as to authorize BWIA to engage in the foreign air transportation of persons, property and mail in scheduled service as follows:
		4. Between the terminal point Antigua, and the terminal point New York, New York;
		5. Between the terminal point Trinidad and Tobago; the intermediate points St. Kitts; Barbados; and St. Lucia; and the terminal point New York, New York; and
		6. Between the terminal point St. Lucia, and the terminal point New York, New York.
		Answers may be filed by March 5, 1984.
Feb. 9, 1984	41990	Conrad Kalitta and Connie Kalitta Services, Inc., c/o Allan W. Markham, 4801 Mass. Ave., N.W., Suite 400, Washington, D.C. 20016. Application of Conrad Kalitta and Connie Kalitta Services, Inc. applies for transfer of a Section 418 all-cargo service certificate. Conforming Applications, Motions To Modify Scope and Answers may be filed by March 8, 1984.
Feb. 6, 1984	41835	Cook Inlet Aviation, Inc., Box 175, Homer, Alaska 99603. Corrected Application of Cook Inlet Aviatin, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Board's Procedural Regulations to engage in interstate and overseas scheduled air transportation.
		Answers may be filed by March 5, 1984.
Do	41776	Aerotransportes Entre Rios S.R.L., c/o Paul Reiber, 6714 Whittier Avenue, McLean, Virginia 22101. Application of Aerotransportes Entre Rios S.R.L., amends its application to delete Cuba as an intermediate country.
Feb. 9, 1984	41642	Sun Country Airlines, Inc., c/o Dennis N. Barnes, 1800 M Street, N.W., Washington, D.C. 20036. Amendment to the Application of Sun Country Airlines, Inc. amends its application through the submission of various revised exhibits and one wording change pertaining to previous documents, all which are specified in the filing.
		Answers may be filed by March 8, 1984.
Feb. 10, 1984	41993	James M. Foode d/b/a Chitina Air Service, c/o Teresa A. Sloan, P.O. Box 731, Cordova, Alaska 99574. Application of James M. Foode d/b/a Chitina Air Service, pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies a certificate of public convenience and necessity for an indefinite term to perform scheduled interstate air transportation of persons, property and mail within the State of Alaska between the terminal point Cordova and the intermediate points: Cape Yakataga, Icy Bay, Boswell Bay, Chitina, Tatitlek and Valdez.
		Conforming Applications, Motions To Modify Scope and Answers may be filed by March 9, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84–4570 Filed 2–21–84; 8:45 am]
BILLING CODE 6320–01–M

[Order 84–1–112]

Use-It-Or-Lose-It Test of Essential Air Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Tentative Approval of a Use-It-Or-Lose-It Test of Essential Air Transportation—Order 84–1–112, Order to Show Cause.

SUMMARY: The Board is proposing to authorize Mississippi Valley Airliens to conduct a use-it-or-lose-it test of essential air transportation at Beloit/Janesville, Wisconsin, under which a higher level of essential air service will be established for a six-month period to provide the point with an opportunity to support unsubsidized, high frequency service. If the test is unsuccessful, the community has agreed to accept a zero essential air service determination. The complete text of this order is available as noted below.

DATES: Objections—all interested persons wishing to object to the Board's tentative decision shall submit their response no later than March 13, 1984.

Reply Comments—all reply comments shall be submitted no later than March 28, 1984.

ADDRESSES: Objections and comments should be sent to Docket 39162, Docket Section, Room 714, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 and to all persons listed in Appendix C to Order 84–1–112.

FOR FURTHER INFORMATION CONTACT: William C. Boyd, Chief, Essential Air Services Division I, Bureau of Domestic Aviation, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5405.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–1–112 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 84–1–112 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: January 26, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84–4561 Filed 2–21–84; 8:45 am]
BILLING CODE 6320–01–M

CIVIL RIGHTS COMMISSION

Indiana 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 Indiana Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:30 p.m., on March 8, 1984. The purpose of this meeting is to discuss the status of two projects on one block grants and another on Indiana prisons. The Committee will also discuss followup plans to its report on housing discrimination.

Person desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Dr. Joseph J. Russell, at (812) 824–7785 or the Midwestern Regional Office at (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 16, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–4673 Filed 2–21–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Receipt of Application for Permit; Department of Interior, Minerals Management Service

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. 1531–1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: Department of Interior-Minerals Management Service (P210A).

b. Address: Alaska OCS Region, 800 A Street, Anchorage Alaska 99501.

2. Type of Permit: Scientific Research/ Scientific Purposes.

3. Name and Number of Animals: Gray whales *(Eschrichtius robustus)* unspecified number. Bowhead whales *(Balaena mysticetus)* unspecified number.

4. Type of Take: Potential harassment and harassment while conducting aerial and shipboard observational monitoring to determine distribution, abundance and migration routes and while determining response behavior to operational geophysical vessels.

5. Location of Activity: Beaufort, Chukchi, and Bering Seas.

6. Period of Activity: 5 yrs.

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.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: February 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–4641 Filed 2–21–84; 8:45 am]

BILLING CODE 3510–22–M

Receipt of Application for Permit: Michael Graybill

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), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Mr. Michael Graybill (P304A).

b. Address: Oregon Institute of Marine Biology, University of Oregon, Charleston, Oregon 97420.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Harbor Seals (Phoca vitulina).

4. Type of Take: To tag and take specimen materials while making an initial step toward the construction of a life history table.

5. Location of Activity: Coos Bay, Oregon.

6. Period of Activity: 3 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.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 89115.

Dated: February 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–4642 Filed 2–21–84; 8:45 am]

BILLING CODE 3510–22–M

Issuance of Letters of Authorization; Sefel Geophysical Ltd.

Notice is hereby given that on February 14, 1984 the National Marine Fisheries Service issued a Letter of Authorization under the authority of Section 101(a)(5) of the Marine Mammal Protection Act of 1972 and 50 CFR Part 228, Subpart B—Taking of Ringed Seals

Incidental to On-Ice Seismic Activities to the following: Sefel Geophysical Ltd., 201 South Cherokee Street, Denver, Colorado 80223.

This Letter of Authorization is valid for 1984 and is subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subparts A and B).

Issuance of this Letter is based on a finding that the total level of taking will have a negligible impact on the ringed seal species or stock, its habitat and its availability for substance use.

This Letter of Authorization is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: February 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-4643 Filed 2-21-84; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant; Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Allied Corporation, having a place of business at Morristown, New Jersey, an exclusive right to manufacture, use, and sell products embodied in the invention "Method for Screening Bacteria and Application thereof for Field Control of Disease caused by *Gaeumannomyces Graminis,*" U.S. Patent Application Serial No. 415,778. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Champion,

Patent Licensing, Office of Government Inventions and Patents, Department of Commerce, National Technical Information Service.

[FR Doc. 84-4607 Filed 2-21-84; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant; Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to The Upjohn Company, having a place of business at Kalamazoo, Michigan, an exclusive right to manufacture, use, and sell products embodied in the invention, Method of Treating Cancers with Methyl Glyoxal Bis-Guanyl Hydrazone," U.S. Patent Application Serial Nos. 6–268,670 and 6–410,965. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, Box, 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing, Office of Government Inventions and Patents, Department of Commerce, National Technical Information Service.

[FR Doc. 84-4608 Filed 2-21-84; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board Meeting

AGENCY: Department of the Army; Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice addresses the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is to be jointly chaired by Dr. Laurence R. Jahn, Chairman, EAB, and Lieutenant General J. K. Bratton, Chief of Engineers, U.S. Army. The meeting is open to the public.

DATE: The meeting will be held from 8:00 a.m., Tuesday, March 6, 1984 to 12:00 noon, Thursday, March 8, 1984.

ADDRESS: The meeting will be held at the Red Lion Inn Lloyd Center, 1000 N. E. Multnomah, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Ronald G. Kelsey, Assistant Director of Civil Works for Environmental Programs, Office of the Chief of Engineers, Washington, D.C. 20314, (202) 272–0103.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the Environmental Advisory Board meeting is:

6 March—Tuesday—A.M. Session

8:00—Meeting convened—opening remarks
9:30—Civil Works update
10:15—Old business

P.M. Session

1:00—History of Water Resources Development on the Columbia River and Tributaries (CRT)
2:00 Cumulative Environmental Impacts on CRT
3:15—History of Anadromous Fish Runs on CRT
4:15—Fish Transportation Program
5:30—Meeting recessed

7 March—Wednesday—A.M. Session

8:00—Regional Power Council, Fish and Wildlife Considerations
9:00—Hatcheries on the CRT
9:35—North Pacific Division Fish Passage Development and Evaluation Program
10:30—Snake River
Sports Fishing Institute Report
Fish & Wildlife Compensation Plan
GAO Report (Crystal Springs)

P.M. Session

1:30—Justification for Mitigation
3:45—Mediation and Mitigation
5:00—Meeting recessed

8 March—Thursday—A.M. Session

8:00—EAB Report to the Chief of Engineers
9:30—Chief of Engineers Response
10:30—Public comments

12:00—Meeting adjourned

This committee meeting notice is published after the statutory prescribed deadline for publication of such notice due to an inadvertent procedural error which prevented its timely publication.

John O. Roach,

Army Liaison Officer with the Federal Register.

[FR Doc. 84-4617 Filed 2-21-84; 8:45 am]

BILLING CODE 3710-08-M

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Potential Alternatives to Provide Flood Damage Reduction in the Pearl River Basin Near Jackson, Mississippi

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: 1. *Proposed Action:* The proposed action is to provide a more comprehensive solution to flooding in the Pearl River Basin near Jackson, Mississippi. Several interim measures have been identified allowing a level of flood protection to be in place while additional engineering and environmental evaluations are being made related to a more comprehensive solution.

2. *Alternatives*: Several alternatives are being developed for providing the comprehensive flood protection. The DEIS will include an evaluation of the environmental, social, economic, and engineering impacts associated with each alternative plan. The following alternatives are being considered:

a. No action—This alternative will be the "without" project conditions against which impacts will be measured.

b. Clearing—This alternative would consist of selective and/or total removal of vegetation within the floodway.

c. Construction of a dam—This alternative would consist of constructing a "dry dam" at the headwaters of the upper pool limits of the existing Ross Barnett Reservior, approximately 20 miles upstream of the Ross Barnett Dam.

3. *Scoping Process*:

a. The scoping process, as outlined by the Council on Environmental Quality in the November 29, 1978 **Federal Register**, National Environmental Policy Act-Regulations, have been and will continue to be utilized to involve Federal, State, and local agencies and other interested persons. Identification of significant issues to be addressed in the EIS have been and will continue to be determined through the scoping process. The agencies and individuals' views and concerns will be obtained through personal, telephone, and mail contacts in lieu of a formal scoping meeting.

b. Coordinating with the U.S. Fish and Wildlife Service, as required by the Fish and Wildlife Coordination Act and the Endangered Species Act, is being undertaken. Coordination required by other laws and regulations will also be conducted.

4. *DEIS Preparation*: It is estimated that the DEIS will be available to the public in May 1984. Questions about the proposed action and DEIS can be answered by:

Mr. Dru Barrineau, PD–ES, U.S. Army Engineer District, Mobile, P.O. Box 2288, Mobile, Alabama 36628, (205) 690–2722 or FTS 537–2722.

Dated: February 8, 1984.

Patrick J. Kelly,

Colonel, CE, District Engineer.

[FR Doc. 84-4610 Filed 2-21-84; 8:45 am]

BILLING CODE 3710-CR-M

DEPARTMENT OF EDUCATION

National Advisory Council on Continuing Education; Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: March 14, 15, and 16, 1984.

ADDRESS: Hyatt Regency—Washington, 400 New Jersey Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Exeuctive Director, National Advisory Council on Continuing Education, 425 Thirteenth Street, NW., Suite 529, Washington, D.C. 20004, Telephone: (202) 376–8888.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under Section 117 of the Higher Education Act (20 U.S.C. 1009), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) the preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The Council meeting will begin on March 14 with a dinner meeting from 7:00 P.M. to 9:00 P.M., and continue from 8:30 A.M. to 5:00 P.M. on March 15, and from 8:30 A.M. to 12:00 Noon on March 16, 1984.

The proposed agenda includes:

—Approval of Minutes.

—Approval of Agenda.

—Discussion: Higher Education and the American Workforce:

• Labor market information systems; their use by colleges and universities for planning purposes;

• The Higher Education Act; implications for the training and continuing education of the workforce.

—Executive Director's Report.

—Future Meetings.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 425 Thirteenth Street, NW., Suite 529, Washington, D.C.

Signed at Washington, D.C. on February 14, 1984.

William G. Shannon,

Executive Director.

[FR Doc. 84-4651 Filed 2-21-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Placid Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department

of Energy (DOE) announces that it has adopted a Consent Order with Placid Oil Company (Placid) as a final order of DOE.

EFFECTIVE DATE: February 22, 1984.

FOR FURTHER INFORMATION CONTACT: James O. Neet, Jr., Chief Counsel, Dallas Office, Economic Regulatory Administration, Department of Energy, 1341 W. Mockingbird, 200E, Dallas, Texas 75247, 214/767–7401.

SUPPLEMENTARY INFORMATION: On December 23, 1983, the ERA published a notice in the **Federal Register** that it had executed a Consent Order with Placid Oil Company on November 23, 1983, which would not become effective sooner than 30 days after publication of that notice. Pursuant to 10 CFR 205.199J(c) interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

Comments were received from three entities. None of the comments objected to the Consent Order. All of the comments focused on the proposed distribution of funds (if any) remaining after payment to identifiable injured parties. All the comments advocated that any remaining funds be distributed on a pro-rata basis to these various states to finance energy related projects.

The proposed Consent Order stated that DOE will deposit the sum of $1,400,000.00 received from Placid into a suitable account for later disposition by DOE. The ultimate distribution of these funds will depend upon several factors, including the type of alleged violations underlying the Consent Order and the ability of the ERA to identify Placid customers which may be entitled to a refund of these funds. ERA has not yet determined an appropriate distribution for the refunded amount. Accordingly, as the Consent Order provides, the monies will be placed in a DOE interest bearing escrow account until an appropriate distribution is determined.

Having considered all comments submitted, DOE has determined that the proposed Consent Order with Placid should be made final without modification. The Consent Order was adopted as a final order on February 22, 1984.

Issued in Dallas, Texas on the 27th day of January, 1984.

Ben L. Lemos,

Director, Dallas Office Economic Regulatory Administration.

[FR Doc. 84–4677 Filed 2–21–84; 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

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective March 1, 1984. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, S.W., Room BE–034, Washington, D.C. 20585, Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama	4.16
Arizona [1]	4.17
Arkansas [1]	3.88
California [1]	4.17
Colorado [2]	4.07
Connecticut [1]	4.52
Delaware [1]	4.37
Florida	4.22
Georgia [1]	4.41
Idaho [2]	4.07
Illinois	4.25
Indiana	3.95
Iowa [1]	4.16
Kansas	3.98
Kentucky [1]	4.27
Louisiana [1]	3.88
Maine [1]	4.52
Maryland [1]	4.37
Massachusetts	4.49
Michigan [1]	4.27
Minnesota [1]	4.16
Mississippi [1]	4.41
Missouri [1]	4.16
Montana [2]	4.07
Nebraska	4.13
Nevada [1]	4.17
New Hampshire [1]	4.52
New Jersey [1]	4.37
New Mexico	3.66
New York	4.35
North Carolina [1]	4.41
North Dakota [1]	4.16
Ohio	4.19
Oklahoma [1]	3.88
Oregon	4.15
Pennsylvania [1]	4.37
Rhode Island [1]	4.52
South Carolina [1]	4.41
South Dakota [1]	4.16
Tennessee	4.32
Texas [1]	3.88
Utah [2]	4.07
Vermont [1]	4.52
Virginia [1]	4.41
Washington [1]	4.17
West Virginia [1]	4.27
Wisconsin	4.25
Wyoming [2]	4.07

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM–79–21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during December 1983 was $33.76 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective March 1, 1984, is $7.57 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual

fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: For each selling price, the number of gallons sold to large industrial users in the months of October 1983, November 1983, and December 1983.[3] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective March 1, 1984, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, October 1983, November 1983, and December 1983. Reported prices for sales in October 1983 were adjusted by the percent change in the nationwide volume-weighted average price from October 1983 to December 1983. Prices for November 1983 were simularly adjusted by the percent change in the nationwide volume-weighted average price from November 1983 to December 1983. The volume-weighted 3-month average of the adjusted October 1983 and November 1983, and the reported December 1983 prices were then computed for each State.

(2) *Adjusted for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level is discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of October, November, and December 1983. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was detemined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cites throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending February 14, 1984, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of December 1983. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

Region B

Delaware	New York
Maryland	Pennsylvania
New Jersey	

Region C

Alabama	North Carolina
Florida	South Carolina
Georgia	Tennessee
Mississippi	Virginia

Region D

Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	

Region E

Iowa	Nebraska
Kansas	North Dakota
Missouri	South Dakota
Minnesota	

Region F

Arkansas	Oklahoma
Louisiana	Texas
New Mexico	

Region G

Colorado	Utah
Idaho	Wyoming
Montana	

Region H

Arizona	Oregon
California	Washington
Nevada	

Issued in Washington, D.C., February 17, 1984.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 84-4745 Filed 2-21-84; 8:45 am]

BILLING CODE 6450-01-M

[3] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

Federal Energy Regulatory Commission

John L. Fraley; Order Dismissing Application and Noting Interventions

Issued: February 17, 1984

On January 26, 1983, John L. Fraley filed an application for an order declaring that his interlocking directorates in Duke Power Company (Duke), First Union Corporation (Corporation), and First Union National Bank (Bank) do not require additional Commission authorization pursuant to section 305(b) of the Federal Power Act. 16 U.S.C. 825(b) (1976). Alternatively, Mr. Fraley requests that the Commission grant him authorization to serve as a director of each of the three named companies.

Duke is a public utility within the meaning of section 305(b). Corporation is a bank holding company and Bank, a national bank, is its wholly-owned subsidiary.[1] Mr. Fraley has been a Director of both Corporation and Bank since 1975[2] and serves on the General Trust Committee of Bank. He has been a Director of Duke Power Company since 1977 and serves on the Audit and Compensation Committee of the Board of Directors. Mr. Fraley is an outside director of both companies, his principal business being vice Chairman of the Board, Director, and Chief Executive Office of Carolina Freight Carriers Corporation, an interstate motor carrier. Mr. Fraley was authorized to hold his current positions by virtue of his April 29, 1981 notification to the Commission in compliance with the Commission's order in *Edison Electric Institute*, 14 FERC ¶61,286, *order on reh.* 15 FERC ¶ 61,173 (1981).[3]

On December 15, 1982, Bank acquired the securities firm, Salem Securities, Inc., which was renamed First Union Discount Brokerage Services, Inc. (Discount), effective January 1, 1983. Discount is a retail brokerage firm or so-called "discount broker;" as discussed below, its involvement in the securities markets is limited to the execution of buy and sell orders on behalf of its customers. Mr. Fraley contends that Discount is not authorized by law to underwrite or participate in the marketing of public utility securities, and consequently that acquisition of this firm by Bank does not subject Mr. Fraley to a further filing or approval requirement with respect to his existing positions.

Notice of Mr. Fraley's application was published in the **Federal Register** with responses due on or before February 14, 1983. Duke filed a timely motion to intervene in support of the application, and Corporation and Bank jointly filed a similar motion to intervene.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1983), the timely motions to intervene serve to make Duke, Corporations, and Bank parties to this proceeding.

Section 305(b) prohibits any person from holding the position of officer or director of a public utility and the position of officer or director of a bank, trust company, bank association, or firm that is *authorized to underwrite or participate in the marketing of public utility securities*, unless the holding of such positions has been affirmatively authorized by the Commission upon a showing that neither public nor private interests will be adversely affected.

As noted above, the interlocks held by Mr. Fraley are subject to this Commission's jurisdiction in any event under the rationale expressed in *Edison Electric Institute, supra.* However, in the absence of actual underwriting or marketing activities by Bank, the limited filing requirements established in that order were controlling prior to the acquisition of Discount. The question currently before the Commission is whether the addition of Discount to the corporate family imposes more stringent filing and approval requirements upon Mr. Fraley. Stated differently, the question is whether Discount is authorized to underwrite or participate in the marketing of public utility securities as those terms are used in section 305(b). If so, the activities of Discount would be attributed to Bank and Corporation, thus potentially requiring further Commission authorization for Mr. Fraley's positions.[4]

We believe that Discount is *not* authorized to underwrite or participate in the marketing of public utility securities, and consequently that the acquisition of Discount imposes no additional filing and approval requirements.

As presented in Mr. Fraley's application, Discount's role in the securities markets is confined strictly to the mechanical execution of buy and sell orders on behalf of customers. Discount does not underwrite public utility securities, does not appear to provide securities investment counseling, does not appear to buy or sell securities on its own behalf, and does not appear to promote the purchase or sale of any particular securities. Rather, it provides the same largely mechanical service that many banks traditionally have provided as an accommodation to their customers.[5]

We note that in the context of interlocks between utilities and underwriters or securities dealers, while we must on occasion bar the underwriting or marketing of certain public utility securities as a condition of approval to protect public and private interests, we have continued to allow the buying and selling those same securities in the so-called secondary securities markets on behalf of investors who wish to buy or sell those activities.[6]

While we recognize the dangers presented by conflicting interests and the lack of arm's length bargaining which can arise from interlocking positions, we do not find those dangers to be present here.[7] The limited securities activities of Discount in the secondary or retail brokerage markets do not give rise to the concerns that underlie section 305(b).[8] The elimination

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[1] A diagram showing the relevant corporate relationships and Mr. Fraley's position is presented in Attachment A.

[2] Mr. Fraley also served in this capacity during the period 1971–1972.

[3] In *Edison Electric Institute*, the Commission concluded that interlocks between public utilities and commercial banks are jurisdictional. To the extent that a bank is not actually engaged in the marketing of public utility securities, including commercial paper, we have permitted the use of an abbreviated application to satisfy the statutory requirement and have effectively pre-granted authorization upon submission of such an application. However, where a bank's dealings are something more, be it marketing public utility commercial paper or acquiring a subsidiary that is authorized to underwrite or market public utility securities, for example, we have required a full application under Part 45 of our regulations. *See Thomas Madison McDaniel Jr.*, 24 FERC ¶ 61,026 (1983); *Edison Electric Institute*, 14 FERC ¶ 61,286, *order on reh.* 15 FERC ¶ 61,173 (1981).

[4] In a series of recent proceedings, the Commission has concluded that a company with a wholly-owned subsidiary that is an underwriter or securities dealer would itself be considered an underwriter or securities dealer. *E.g., Frederick W. Mielke, Jr.*, 22 FERC ¶ 61,004 (1983); *William T. Coleman, Jr.*, 19 Ferc ¶ 61,270 (1982); *Margery Somers Foster*, 19 FERC ¶ 61,146, *order on reh.* 19 FERC ¶ 61,312 (1982).

[5] *See generally Board of Governors of Federal Reserve System v. Investment Company Institute*, 450 U.S. 46 (1981); *Investment Company Institute v. Comp*, 401 U.S. 617 (1971); *BankAmerica Corp.*, Federal Reserve Board (January 7, 1983) *aff'd sub nom., Securities Industry Ass'n. v. Board of Governors*, 716 F.2d 92 (2d Cir. 1983), *cert. granted*, 52 U.S.L.W. 3550 (S. Ct. January 24, 1984); *Security Pacific National Bank*, Comptroller of the Currency (August 26, 1982), *aff'd in part and rev'd in part*, [Current] Fed. Sec. L. Rep. (CCH) ¶ 99,552 (D.D.C. 1983). *app. pending*, Nos. —— (D. C. Cir.).

[6] *See Thomas Madison McDaniel, Jr.*, 24 FERC ¶ 61,026 (1983); *Robert F. Gilkeson*, 22 FERC ¶ 61,226 (1983); *Frederick W. Mielke, Jr.*, 22 FERC ¶ 61,004 (1983).

[7] *See Hatch v. FERC, 654 F.2d 825, 831–32 (D.C. Cir. 1981).*

[8] *See John Edward Aldred, 2 F.P.C. 247 (1940).*

of competition, a lack of arm's length dealing, the presence of dummy or nominal directors, or other violations of the law, ethics or good business practices toward which Section 305(b) was directed are simply not implicated by Discount or by the buying and selling in the secondary, retail markets. Further, the provisions of the Glass-Steagall Act ensure that Discount will not participate in the underwriting or marketing of public utility securities. Consequently, we find that the acquisition of Discount does not subject Bank to further jurisdiction under section 305(b) and we shall accordingly dismiss the application.[9]

The Commission orders:

(A) John L. Fraley's application for approval of interlocks between Duke Power Company and both First Union Corporation and First Union National Bank, on the basis of the latter's acquisition of a discount brokerage service, is hereby dismissed for lack of jurisdiction.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

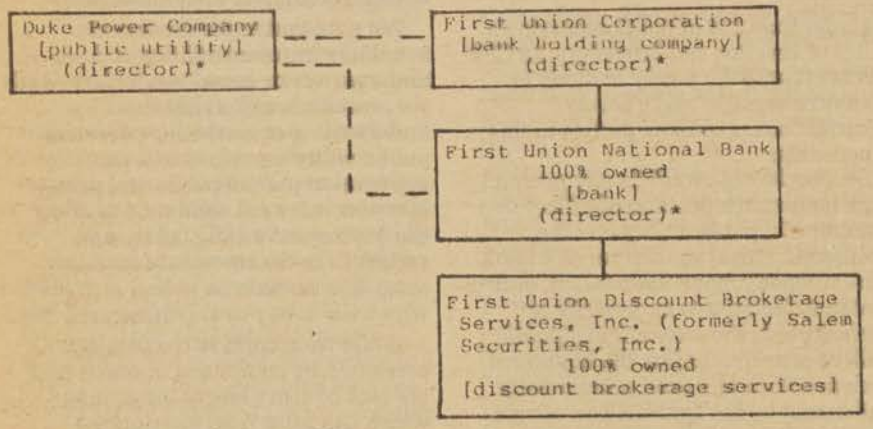
By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

John L. Fraley
Docket No. ID-2031-000
Diagram of Corporate Relationships



interlocking positions of John L. Fraley

FR Doc. 84-4682 Filed 2-21-84; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 4314-001]

Henwood Associates, Inc.; Order Revoking Case-Specific Exemption From Licensing

Issued: February 17, 1984.

On October 28, 1981, a case-specific exemption from licensing under Part I of the Federal Power Act was issued to Henwood Associates, Inc. ("Henwood") for the proposed Dynamo Pond Project No. 4314. 17 FERC ¶62,134. The Dynamo Pond Project is to be located on Green Creek in Mono County, California. The exemption requires Henwood to comply with standard articles for case-specific exemptions, which are set forth in § 4.106 of the Commission's regulations, 18 CFR 4.106. Henwood has failed to comply with certain articles of the exemption. Therefore, the exemption will be revoked.

Article 2 of the exemption, set forth at 18 CFR 4.106(b), requires Henwood to comply with terms and conditions that any state fish-and-wildlife agency, in comments submitted in response to notice of the exemption application, has determined are appropriate to prevent loss of, or damage to, fish and wildlife resources. On October 26, 1981, the California Department of Fish and Game ("DFG") filed with the Commission the following conditions for the Dynamo Pond Project:

1. [Henwood] shall perform studies to the satisfaction of [DFG] to determine the effects of the proposed project on fish and wildlife resources and to identify feasible measures that will fully offset any adverse effects to fish and wildlife resources, and shall present a detailed report of the result of those studies to [DFG] not later than 60 days after completion of the studies.

2. [Henwood] shall provide all pertinent project information to [DFG] in sufficient time for [DFG] to utilize the necessary information in its decision-making process.

3. [Henwood] shall implement each recommendation for protection of fish and wildlife resources that may be proposed by [DFG] as a result of the studies described in Condition No. 1 or as a result of information provided under Condition No. 2.

Henwood has not contested these conditions.

According to DFG, a study submitted to it by Henwood during March 1982 did not sufficiently consider the proposed project's effect on fish in Green Creek. By letter dated April 9, 1982, DFG notified Henwood that the study was unsatisfactory and requested that Henwood supply additional information in order to evaluate the validity of Henwood's model of Green Creek, which was the basis of the study. Henwood neither furnished the requested information DFG nor asked for additional time in which to submit the requested information.

Article 3 of the exemption, which appears at 18 CFR 4.106(c), permits the Commission to revoke the exemption if actual construction or development of any proposed generating facilities of the project is not begun within eighteen months from the date on which the exemption is granted. Construction of the Dynamo Pond Project's generating facilities did not begin by April 28, 1983, the due date for start of construction under Article 3. Henwood has filed no application for an extension of this due date.

Article 5 of the exemption, set forth in 18 CFR 106(e), allows the Commission to revoke the exemption if any necessary to use or occupy Federal land for development or operation of the project is not obtained within one year from the date on which the exemption is granted. Construction and operation of the Dynamo Pond Project's penstock and transmission lines affect Federal land administered by the Bureau of Land Management, U.S. Department of the Interior ("BLM"). Henwood was required to obtain a right-of-way permit from BLM before beginning construction of the project. Henwood did not obtain this permit by October 28, 1982, the date specified by Article 5 of the exemption. Henwood has not applied for an extension of the due date for obtaining the permit.

Thus, Henwood has failed to comply with Articles 2, 3 and 5 of the exemption. Moreover, Henwood has requested that the Commission revoke

[9] Should Discount's involvement in the securities markets increase substantially beyond that described here, a different case would be before us and a different result might be warranted.

the exemption.[1] The exemption, therefore, will be revoked pursuant to § 4.106(a) of the Commission's regulations, 18 CFR 4.106(a). The effective date of the revocation will be thirty days from the date of this order.

The Commission Orders:

(A) The case-specific exemption from licensing under Part I of the Federal Power Act for the Dynamo Pond Project, FERC No. 4314, issued to Henwood Associates, Inc. on October 28, 1981, is revoked, effective thirty days from the date of this order.

(B) The Secretary shall ensure that this order is published in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4681 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-44-006]

Algonquin Gas Transmission Co.; Reduction of Rate Schedule STB Demand Handling Charge in Compliance With Docket No. RP 83-44 Stipulation and Agreement

February 15, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on February 6, 1984, tendered for filing Second Revised Sheet No. 211 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Second Revised Sheet No. 211 is being filed in compliance with Algonquin Gas' Docket No. RP83-44-000 Stipulation and Agreement. The rates as shown on Sheet No. 211 reflect a reduction of 20¢ in the Rate Schedule STB Demand Handling Charge. Algonquin Gas will effectuate the 20¢ rate reduction as of August 1, 1983 by providing a credit on the March 1, 1984 bills equal to the 20¢ rate reduction on Rate Schedule STB sales for the period August 1, 1983 through February 29, 1984. Such credit will include interest from the date of payment of the applicable billing period to the April 7, 1984 billing date of March, 1984 sales.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before February 27, 1984. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4578 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-403-001]

Consolidated Gas Supply Corp., Amendment to Application

February 15, 1984.

Take notice that on February 7, 1984, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP83-403-001 an amendment to its application filed in Docket No. CP83-403-000 pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to make certain sales to natural gas in interstate commerce for resale in addition to those proposed in the original application in Docket No. CP83-403-000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that its original proposal in Docket No. CP83-403-000 was structured and intended to compete with proposals made in *Boundary Gas, Inc.*, Docket No. CP81-107-000, and related proceedings. Applicant's proposal in Docket No. CP83-403-000 was consolidated with proceedings in Docket No. CP83-107-000 and related proceedings by Commission order dated September 29, 1983 (24 FERC ¶61,376). Applicant further states that the instant proposal is an outgrowth of certain settlement discussions which have taken place with repsect to the aforementioned consolidated proceedings.

By its amendment, Applicant proposes to sell certain quantities of natural gas to six local distribution companies and one interstate pipline company (the Phase 1A Purchasers). The Phase 1A Purchasers are Algonquin Gas Transmission Company (Algonquin), The Brooklyn Union Gas Company (Brooklyn Union), Consolidated Edison Company of New York, Inc. (Con Ed), Elizabethtown Gas Company (Elizabethtown), Long Island Lighting Company (Long Island), New Jersey Natural Gas Company (New Jersey Natural), and Public Service Electric & Gas Company (Public Service). More particularly, Applicant proposes to sell natural gas to the Phase 1A Purchasers as follows:

Purchaser	Commencement through Oct. 31, 1984, interruptible (dt/d)	Oct. 1, 1984 to Oct. 31, 1985, firm (dt/d).	Nov. 1, 1985 to Oct. 31, 1986, firm (dt/d)	Nov. 1, 1986 to termination firm (dt/d)
Algonquin	18,146	18,146	20,153	63,360
Brooklyn Union	0	0	0	6,060
Con Ed	4,500	4,500	4,500	7,575
Elizabethtown	2,000	2,000	2,000	2,020
Long Island	2,800	2,800	2,800	3,210
New Jersey Natural	0	0	0	6,060
Public Service	12,500	12,500	12,500	21,715
Total	39,946	39,946	41,953	110,000

The amendment states that for deliveries of interruptible gas, Applicant proposes to charge the rate specified in Rate Schedule RQ, expressed as a commodity rate and calculated on an imputed 100% load factor basis (currently $3.852/dt). For sales of firm gas, Applicant proposes to charge the three-part rate set forth in its Rate Schedule RQ or effective superseding rate schedule. However, it is stated, during the initial year of deliveries Applicant's sales to Algonquin will be on an interruptible basis and will be charged for at a rate based on the above Rate Schedule RQ rate calculated on an imputed 70% load factor basis (currently $3.9210/dt).

Applicant states that interruptible deliveries are proposed to commence as soon as all necessary regulatory approvals have been received and to continue until firm deliveries commence. Firm deliveries are scheduled to commence on November 1, 1984, or as soon thereafter as the Phase 1A Purchasers have secured the necessary firm transportation service. Firm deliveries continue until October 31, 1992, and from year to year thereafter. The application states that all quantities of natural gas will be delivered by Applicant, for the account of the Phase 1A Purchasers, to either Texas Eastern Transmission Corporation (Texas Eastern), to Transcontinental Gas Pipe Line Corporation (Transco), or in some cases to both Texas Eastern and Transco, at existing points of interconnection between Applicant's facilities and those of Texas Eastern and Transco at Leidy Storage Pool in Clinton County, Pennslyvania. Each of the Phase 1A Purchasers, it is stated, has arranged with Texas Eastern and/or Transco for the transportation of natural gas which

[1] On April 28, 1983, Henwood filed both its request that the exemption be revoked and an application for a preliminary permit for the Dynamo Pond Project. By letter dated October 19, 1983, the Deputy Director of the Commission's Office of Electric Power Regulation rejected the preliminary application, pursuant to § 4.104(c)(1)(i) of the Commission's regulations, 18 CFR § 4.104(c)(1)(i).

each Phase 1A Purchaser will obtain from Applicant.

No new or additional facilities need to be constructed by Applicant in order to make the proposed sales. Applicant's application states that the source of the gas will be Applicant's system supply and that Applicant has adequate available supplies of natural gas to make the proposed sales throughout the term of the sales agreements.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 23, 1984 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. Persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4579 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 6154-002; 6154-004]

David G. DeMera; Surrender of Exemption and Dismissing Request for Extension of Time for Compliance With Exemption From Licensing

February 15, 1984.

Take notice that David G. DeMera (DeMera), Exemptee for the proposed mill and Sulphur Creeks Project No. 6154 has requested that his exemption be terminated. The exemption was issued on July 21, 1982. The project would have been located on Mill and Sulphur Creeks in Humboldt County, California.

In addition, DeMera has filed on September 30, 1983, a request for an additional six months for the term to begin construction of the same project for which he has now filed a surrender request.

DeMera filed his request for surrender on January 17, 1984, and the surrender of his exemption for Project No. 6154 is deemed accepted effective 30 days from the date of this notice. Accordingly, the request for extension of time is moot and therefore dismissed.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4580 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-4-002; (PGA84-1B)]

Granite State Gas Transmission, Inc.; Proposed Change in Rates Pursuant to Purchased Gas Cost Adjustment Provisions

February 16, 1984.

Take notice that Granite State Gas Transmission, Inc. (Granite State) 120 Royall Street, Canton, Massachusetts 02021, on February 10, 1984 tendered for filing Substitute Alternate Sixth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing proposed changes in rates for effectiveness on January 1, 1984.

According to Granite State, the instant rate adjustments reflect a decrease in its cost of gas purchased from Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) which Tennessee has made effective as of January 1, 1984 pursuant to a settlement in Docket Nos. RP82-125-000, *et al.* Except for an adjustment to correct for an error that has resulted in undercollections of its gas costs since July 1, 1983 in the amount of $0.0062 per Mcf on all purchases, Granite State's filing is made pursuant to the purchased gas cost adjustment provision in Section XIX of the General Terms and Conditions of its tariff. In its filing, Granite State requests permission to reduce the Cumulative Adjustments to its Rate Schedule CD-1 and CD-2 Commodity rates by $0.0062 per Mcf to avoid further undercollections and also to restate its surcharge adjustments in the Commodity rates to reflect accumulated undercollections between July and September, 1983.

Granite State further states that its rate adjustments are applicable to its jurisdictional wholesale sales to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. According to Granite State, the effect of the proposed rates in its filing is a decrease of approximately $8,700,000 annually in its jurisdictional rates, based on purchases and sales for the twelve months ended September 30, 1983.

According to Granite State, copies of the filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4581 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS66-107-001, et al.]

Hamon Oil Co. (Jake L. Hamon), et al.; Applications for "Small Producer" Certificates [1]

February 16, 1984.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said application should on or before March 5, 1984, 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.

Under the procedure herein provided for, unless otherwise advised, it will be

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket Number	Date filed	Applicant
CS66-107-001	[1] 2-10-84	Hamon Oil Comapany, Post Office Box 663, Dallas, Texas 75221-0663.
CS72-420-001	[2] 6-17-83	Grande Oil Company, 1920 Alamo National Bank Building, San Antonio, Texas 78205.
CS72-421-000, CS72-1030-000	[3] 1-6-84	Natural Resources Corporation, 1825 Eye Street, NW., Washington, D.C. 20006.
CS74-87-002	[4] 6-20-83	NRM Petroleum Corporation, 600 W. Illinois, Suite 1000, Midland, Texas 79701.
CS76-72-000	[5] 1-27-84	Hall & Youngblood, Inc., (Panhandle Properties, Inc.), P.O. Box 798, Pampa, Texas 79065.
CS83-99-004	[6] 10-17-83	Quinoco Oil & Gas, Inc., P.O. Box 10800, Denver, Colorado 80210-0800.
CS84-32-000	1-17-83	Torch Energy Associates, a Texas limited partnership, 1300 Main, Suite 1520, Houston, Texas 77002.
CS84-33-000	1-16-84	TGG Offshore 1980, Ltd., 3050 Post Oak Blvd., Suite 200, Houston, Texas 77056.
CS84-34-000	1-16-84	Discorbis Oil Company, 1415 Alamo National Building, San Antonio, Texas 78205.
CS84-35-000	1-19-84	Texas General Petroleum Corporation, 3050 Post Oak Blvd., Suit 200, Houston, Texas 77056.
CS84-36-000	1-27-84	Enex Oil & Gas Income Program I—Series 10, One Kingwood Place, Suite 202, Kingwood, Texas 77339.
CS84-37-000	2-6-84	Lorenz & Crouch, Inc., P.O. Box 110539, Arlington, Texas 76007.
CS84-38-000	2-6-84	Charles S. Crouch, P.O. Box 110539, Arlington, Texas 76007.
CS84-39-000	2-6-84	James R. Lorenz, P.O. Box 110539, Arlington, Texas 76007.

[1] Effective January 1, 1984, Jake L. Hamon assigned and conveyed all of its interests to Hamon Oil Company.
[2] Applicant request that B.D. Production Company be covered under its small producer certificate.
[3] Applicant request termination of small producer certificate in Docket No. CS72-421-000 and that its small producer certificate in Docket No. CS72-1030-000 be amended to include the interests of Natural Resources Corporation of Texas, and of NARECO Corporation under its small producer certificate.
[4] Applicant requests to have its affiliates NRM 81-1, Ltd. and HMG Associates covered under its small producer certificate.
[5] Applicant requests that its small producer certificate be redesignated under the name of Hall & Youngblood, Inc.
[6] Applicant requests to cover Quinoco Oil & Gas Income Program 1983-2 under its small producer certificate.

[FR Doc. 84-4582 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM 81-19; ST79-023-003]

Louisiana Intrastate Gas Corp.; Extension Reports

February 16, 1984.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before March 15, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 or 385.214).

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 party to a proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST79-023-003	Louisiana Intrastate Gas Corp., P.O. Box 1352, Alexandria, LA 71301	Mid Louisiana Gas Co	01-25-84	D	05-05-84
ST80-182-002	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Columbia Gas Transmission Corp	01-16-84	G	04-15-84
ST80-220-002	United Texas Transmission Co., P.O. Box 1478, Houston, TX 77001	United Gas Pipe Line Co	01-24-84	C	04-28-84
ST80-224-002	Northwest Central Pipeline Corp., P.O. Box 25128, Oklahoma City, OK 73125.	Pacific Gas and Electric Co. (successor to the Natural Gas Corp. of California).	01-23-84	B	05-01-84
ST80-237-002	Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	Texas Eastern Transmission Corp	01-16-84	C	06-10-84
ST82-168-001 [1]	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Kansas Power and Light Co	01-25-84	B	02-03-84
ST82-267-001	Louisiana Resources Co., P.O. Box 3102, Tulsa, OK 74101	Trancontinental Gas Pipe Line Corp	01-19-84	C	04-19-84
ST82-270-001	Mountain Fuel Supply Co., P.O. Box 11368, Salt Lake City, UT 84139	Northwest Pipeline Corp	01-17-84	G	04-16-84
ST82-280-001 [1]	Oklahoma Natural Gas Co., 624 South Boston Ave., Tulsa, OK 74119	Transwestern Pipeline Co	01-26-84	D	04-22-84
ST82-282-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Louisiana Intrastate Gas Corp	01-27-84	B	04-27-84
ST82-288-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Arkansas Louisiana Gas Co	01-25-84	G	04-26-84
ST82-290-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Richie Gas System, Inc	01-23-84	B	04-23-84
ST82-291-001	Oklahoma Natural Gas Co., 624 South Boston Ave., Tulsa, OK 74119	Mid Louisiana Gas Co	01-26-84	D	04-28-84
ST82-308-001	Stauffer-Wyoming Pipeline Co., P.O. Box 513, Green River, WY 82935	Panhandle Eastern Pipe Line Co	01-23-84	C	05-05-84
ST84-459-001 [1]	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Mid Louisiana Gas Co	01-30-84	G	07-13-83

[1] These extension reports were filed after the date specified by the Commission's Regulations, and shall be the subject of a further Commission order.

Note.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-4583 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-30-000]

Maine Public Service Co.; Application

February 16, 1984.

Take notice that on February 2, 1984, Maine Public Service Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $25 million of unsecured short-term promissory notes maturing not more than 12 months from the date of issuance and to have maturity dates not later than December 31, 1985.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with the Requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such petitions or protests should be filed on or before March 2, 1984. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4584 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-210-001]

Transcontinental Gas Pipe Line Corp.; Amendment

February 16, 1984.

Take notice that on January 19, 1984, Transcontinental Gas Pipe Line Corporation [Applicant], P.O. Box 1396, Houston, Texas 77251, filed in docket No. CP83-210-001 an amendment to its pending application filed February 28, 1983, in Docket No. CP83-210-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect certain changes in the proposed construction and operation of pipeline and appurtenant facilities in the offshore Texas area, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that in its application filed in Docket No. CP83-210-000, it requested authority to construct and operate approximately 32.64 miles of 20-inch pipeline which would connect the existing Cities Service Oil and Gas Corporation [Cities Service] production platform A in Block 669, Matagorda Island Area, offshore Texas, to Cities Service's production platform A in Block A-76, Brazos Area, south addition, offshore Texas. It is stated that the Block A-76 platform is connected to Applicant's Central Texas Gathering System (CTGS). Applicant also proposed to construct and operate metering, regulating, and other appurtenant facilities on the Matagorda Island Block 669 A platform.

It was stated in the application that the gas to be produced from the Block 669 A platform would be gas from Matagorda Island Blocks 653, 654, and 669, that the proposed facilities would have a maximum capability of 80,000 Mcf per day, and that the estimated cost of such facilities was $27,536,000.

It was further stated that, based on information from the producers, the subject reserves should be ready for production on October 1, 1984, and that Applicant planned to construct the proposed facilities during the 1984 summer construction season.

Applicant states that, since the filing of the application the producers have changed their plans for the logistics and timing concerning production of gas from the subject blocks. Applicant asserts that gas would now be produced from both the Matagorda Island Block 669 A and B platforms. Applicant states that the producers plan to install a B platform in August 1984 and have informed Applicant that they plan for production to commence from the B platform in the first quarter of 1985 and for production to commence from the A platform in August 1985.

Additionally, Applicant notes that since the filing of the application it has determined that a less expensive route for a pipeline would be to connect the platforms in Matagorda Block 669 to the CTGS at Brazos Block A-133 rather than at Brazos Block A-76.

Applicant now requests authority to construct and operate (1) approximately 26.7 miles of 20-inch pipeline which would connect Cities Service's A platform in Matagorda Island Block 669 to Cities Service's A platform in Brazos Block A-133 (the latter platform is connected to the CTGS), and (2) approximately 0.06 mile of 12-inch pipeline which would connect Cities Service's B platform in Matagorda Island Block 669 to a subsea tap in the 20-inch pipeline in Block 669. Applicant also requests authority to construct and operate metering, regulating, and other appurtenant facilities on the Matagorda Island Block 669 A and B platforms. The proposed facilities, Applicant asserts, reflect a shorter routing from the application which would entail a savings of approximately $3,325,800. It is expected that the facilities would be constructed during the summer of 1984.

It is stated that the proposed facilities would have a maximum capability of 80,000 Mcf per day and that the estimated cost of such facilities is $24,210,200. It is anticipated that the proposed facilities would be financed with short-term loans and funds on hand.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 8, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4585 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-206-000]

Trunkline Gas Co.; Application

February 16, 1984.

Take notice that on January 23, 1984, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-206-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 16,000 Mcf of natural gas per day on an interruptible basis pursuant to a transportation agreement with Southern dated July 15, 1983, as amended September 20, 1983. It is stated that Southern is purchasing gas from Elf Acquitaine, Inc., pursuant to a gas purchase contract dated June 4, 1983. Applicant proposes to receive gas for Southern's account at the primary point of receipt near Katy, in Waller County, Texas, an existing interconnection between Applicant and Transcontinental Gas Pipe Line Corporation. Applicant would also accept deliveries for Southern's account at existing secondary points of receipt interconnecting Applicant and Texas Eastern Gas Pipeline Company's facilities in both Allen and Beauregard Parishes, Louisiana. Redeliveries to Southern are proposed at an existing interconnection in St. Mary Parish, Louisiana.

Applicant states that Southern would pay a unit transportation charge of 7.58 cents per Mcf for gas received in Waller County and 3.79 cents per Mcf for gas received in Allen and Beauregard Parishes.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 8, 1984, 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. 84-4586 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP81-115-000, et al.]

United Gas Pipe Line Company, et al.; Filing of Pipeline Refund Reports and Refund Plans

February 16, 1984.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before February 29, 1984. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
12/20/83	United Gas Pipe Line Company	RP81-115-000	Report.
1/04/84	Consolidated Gas Supply Corporation	RP72-157-069	Report.
1/26/84	Tennessee Gas Pipeline Company	RP81-38-007	Report.
1/27/84	Great Lakes Gas Transmission Company	RP83-34-003	Report.
1/30/84	Texas Gas Transmission Corporation	RP67-10-000	Report.
2/01/84	Mountain Fuel Supply Company	RP82-126-006	Report.
2/08/84	Inter-City Minnesota Pipelines, Ltd., Inc	RP82-81-004	Report.

[FR Doc. 84-4587 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Docket No. CAS-RM-79-112-B]

Affordable Housing Through Energy Conservation

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of Inquiry.

SUMMARY: The Department of Energy announces the availability of a draft guide for home builders entitled, "Affordable Housing through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes". The draft guides incorporate energy savings calculation and construction techniques for builders of new homes. This Notice of Inquiry is intended to solicit public comment on the draft guide. The Department is particularly interested in receiving comments on the set of questions contained in this Notice.

Congress has directed the Department to develop and promulgate voluntary energy performance standards for the design of new commercial and residential buildings. Only Federal agencies will be required to comply with these standards for the design of new Federal buildings. For all other buildings, these standards will serve as voluntary guidelines.

As defined by statute, an energy performance standard for a new building is a design requirement which prescribes an energy consumption goal and a method for calculating whether the design meets that goal.

Today's issuance provides a simplified calculation technique for analyzing whether the design of a home meets an energy consumption goal. No energy consumption goals, however, have been developed at this time, so that the goal itself could be selected by a homebuilder, financial institution, or a consumer.

Instead of establishing specific energy consumption goals, the draft guide provides a simple, reliable way to determine the cost effectiveness of different energy conservation options without prescribing a specific level of investment for energy conservation. They allow the user to consider regional differences in climatic conditions, building materials and labor costs, energy prices, and energy types.

The draft guide is primarily for the construction of what is known in the building industry as "stick-built" housing. The term "stick-built" refers to those homes built predominantly with wood-frame construction and sheathed with aluminum, vinyl, or wood siding, or a single layer of brick. It does not include housing built with double layers of brick, concrete block, logs, or other forms of massive construction. The Department has begun a project to develop a similar simplified calculation technique for analyzing the design of high mass homes. It is the intention of the Department to incorporate this research into the residential guide when it is published for public use.

The guide, which is the subject of today's notice, will contain an easy to operate slide rule which will enable home builders to calculate the amount of energy that can be saved by incorporating a variety of energy conservation options that affect space conditioning (e.g., infiltration, equipment, insulation). The slide rule will be an operable prototype for the Kansas City, Missouri area, and is only for illustrative and review purposes. When published for public use the guide will contain slide rule tabs for 45 locations. The use of the slide rule is explained in a short brochure. Accompanying the slide rule is a design and construction guidebook that explains how to construct, install, specify, and operate the several energy conservation options analyzed by the slide rule. The guidebook discusses and analyzes additional space conditioning options as well as a variety of domestic hot water and appliance options. The guidebook also provides the user with an easy to use economic evaluation technique for determining the cost effectiveness of a single or combination of options.

The slide rule, slide rule user brochure, guidebook and two technical support documents are available for public inspection at the DOE Headquarters in Washington, D.C. or at the nine DOE Regional Support Offices. Addresses for each are listed elsewhere in this Notice. Copies may be obtained by writing to the Hearings and Dockets Branch of the Office of Conservation and Renewable Energy. Because supplies of the documents are limited, respondents are asked to request the documents only if they plan to submit comments.

DATES: Written comments must be received no later than May 22, 1984. A public meeting will be held on April 3, 1984, 9:00 a.m., in Washington, D.C. at the Department of Energy, 1000 Independence Ave. SW., Roon 1E-245. The purpose of the public meeting is to provide a briefing on the draft guide to interested parties and to allow the opportunity for oral comments.

ADDRESS: Send written comments (5 copies) to: Hearings and Dockets Branch, Office of Conservation and Renewable Energy, Department of Energy, Docket Number CAS-RM-79-112-B, 1000 Independence Avenue, SW., Room 6B-025, Washington, D.C. 20585, (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Architectural & Engineering Systems Branch, Department of Energy, Room GF-253, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9837.

Richard F. Kessler, Office of General Counsel, GC-33, Department of Energy, Room 6B-158, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9519.

SUPPLEMENTARY INFORMATION:

I. Background
II. A Revised View of Performance Standards
III. Technical Approach
IV. Summary of Guide
V. Use of Guide
VI. Questions for Public Comment
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VIII. Comment Procedures

I. Background

The Energy Conservation Standards for New Buildings Act of 1976, as amended (Act), 42 U.S.C. Sec. 6831 *et seq.*, requires the Department of Energy DOE) to issue voluntary performance standards for the design of new commercial and residential buildings. Only Federal agencies are required to comply with the standards for the design of new Federal buildings. For all other buildings, compliance is voluntary, and the standards serve only as voluntary guidelines.

As originally enacted, Title III of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1144 *et seq.*, required the Department of Housing and Urban Development (HUD) to develop, promulgate, implement and enforce compliance with the performance standards. On August 4, 1977, the Act was amended by Section 304(a), 42 U.S.C. Sec. 7154, of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.*, which transferred from HUD to DOE the responsibility to develop and promulgate the standards. HUD retained its implementation responsibilities.

In November 1979, DOE published proposed energy performance standards in the **Federal Register**, 44 FR 68120 *et seq.* (November 28, 1979). The Notice was controversial and generated over 40,000 comments. The comments included technical and other substantive criticisms of the proposed standards. Many commenters expressed concern that the proposed standards were not technically practicable or economically achievable. Furthermore, many commenters stated that the proposed standards placed too great a reliance upon the use of a complex computer program which many commenters said they neither understood nor could afford to use.

Less than a year after publication of the proposed standards, the Act was again amended by Section 362, 94 Stat. 1629, of the Housing and Community Development Act of 1980, Pub. L. 96-399 (October 8, 1980). This amendment required that DOE promulgate interim standards by August 1, 1981, and extended the date for promulgation of a final rule to April 1, 1983. These interim standards were only to apply to new Federal buldings and required demonstration projects in at least two geographical areas.

In August 1981, Congress again amended the Act and also deferred the appropriation for the program for fiscal year 1981 to fiscal year 1982. Subtitle D of Title 10 of the Omnibus Reconciliation Act of 1981, 97 Stat. 35 (August 13, 1981), amended the Act to create the term "voluntary performance standards"; eliminated the provision for a possible statutory sanction for noncompliance; added a provision that, except for Federal buildings, "voluntary standards will be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings"; and extended the time to meet a reporting requirement.

II. A Revised View of Performace Standards

The legislative changes which have taken place since enactment of the Act in 1976 have required a fundamental change in program focus. DOE retains the responsibility for developing voluntary performance standards for all new buildings but these standards now serve a dual purpose. The performance standards serve one purpose for the Federal sector where the standards would set required performance levels for Federal buildings only. However, the Act specifically directs that, except for Federal buildings, voluntary performance standards "* * * shall be developed solely as guidelines for the purpose of providing technical assistance for the design and

construction of energy efficient buildings", Section 304(a)(4) of the Act. Accordingly, the standards serve a second purpose for the private sector by providing sound technical information and examples of cost effective, energy efficient design and construction practices.

The Act defines the term "voluntary performance standards" to mean:

> an energy consumption goal or goals to be met without specification of the method, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary. Section 303(a) of the Act.

As intended by the Act, the voluntary preformance standards provide an objective for energy efficiency during the design stage. Because performance standards are used at the design stage prior to construction, they do not set requirements for the operation, maintenance or energy consumption of a building once built. They operate by setting an energy consumption goal for a building; i.e., a quantified target of energy consumption at the design stage and a method to calculate whether a design meets the energy consumption goal.

Past experience with the development of standards for this program has demonstrated the need for a simple, reliable way to enable a person to determine the cost effectiveness of different energy conservation options. Comments received in response to proposed energy performance standards published in November 1979 were especially critical of the apparent need to use a complex, time-consuming computer program as the calculation method.

Use of a complex computer program alienated many and left others unconvinced of its technical accuracy. Additionally, it became clear that people will only invest in greater energy efficiency if convinced that the long term cost savings, from reduced energy consumption, justify the first cost expenditure. Accordingly, DOE has developed calculation techniques which demonstrate the effect of additional energy conservation options in a new home. One must first be able to calculate the costs and benefits of additional levels of energy conservation. Only then does it make sense to recommend a voluntary energy consumption goal which is technically achievable, economically attainable and environmentally sound. DOE has made a major effort to develop calculation techniques which are accurate, inexpensive, readily understood and easy to operate. The objective has been to develop calculation techniques, which, to borrow a term from the computer industry, are "user friendly."

Today's issuance announces the availability of what DOE hopes will prove to be a user friendly calculation technique to determine the cost effectiveness of energy conserving options for single family homes of the "stick-built" type construction.

III. Technical Approach

DOE established a technical project for the development of the guide using the management services of the American Institute of Architects Foundation (AIA–F). Steven Winter Associates, Inc. (SWA) of New York, an architectural/engineering firm, developed the comprehensive information on energy conservation options included in the guide.

Lawrence Berkeley Laboratory (LBL) conducted computer analysis work on single family homes and provided documentation of the research methods, assumptions and results. LBL was also responsible, in conjunction with SWA, for coordinating and formatting the computer analysis and preparing the single family home slide rules.

Additionally, DOE is initiating a project to develop inputs for high mass housing into the residential guide. The development process for these inputs will be along the same lines as for "stick-built" housing. LBL is responsible for technical analysis in this project, with assistance from SWA.

The project has been aided by several review panels which provided guidance and assistance to the project team: a panel of home builders and other representatives of the homebuilding industry; a research review panel composed of passive solar, climate, and project overview subpanels; and a panel of architects. The research review panel reviewed research methods, assumptions, and results. The home builder and architect panels reviewed the development of the guide as the project progressed. Representatives from utilities, public interest groups, consumer groups, environmental groups, and the financial community were asked to provide their views and advice as appropriate. Additionally, a masonry and log industry review panel has been constituted. It will review the "mass" project.

The main goal of these projects are to develop credible energy use analysis tools. Considerable attention has been given to examining all research assumptions and procedures to ensure their adequacy and accuracy. In addition, all research methods, assumptions, and results have been documented to ensure that all research results are reproducible and verifiable. The research documentation is available for review at the DOE Headquarters Office in Washington, D.C. and at the nine DOE Regional Support Offices.

The first step in the research effort was to define building prototypes. For single family detached housing they are ranch, two story, split level and mid and end-unit townhouse prototypes. Prototypes have been defined largely on the basis of data provided by the National Association of Home Builders/Research Foundation. This data included such things as demographic data for site selection, size, configuration, construction type, materials and typical glazing area. DOE–2.1 was then used to determine the rate of energy consumption of each prototype in 45 U.S. climatic locations. DOE–2.1 is a public-domain computer program. It estimates the energy consumption of a building prior to construction by using information derived from the design of a building. It estimates hour-by-hour energy use of a building at the design stage from available information such as location, construction, operation, and heating, ventilation and air-conditioning equipment specifications. It was developed by the Lawrence Berkeley Laboratory in collaboration with Los Alamos National Laboratory with financial support from DOE. Next, a variety of energy conservation options were defined, and DOE–2.1 sensitivity analyses were performed for the prototypical homes in various climates and locations to determine the energy use effects of each option.

The data from this research provided the basis for preparing a data base for displaying the research results. This process enabled the researchers to determine the energy effects of a variety of options. The results were analyzed further, and an easy to use slide rule appeared to provide the most practical format to display the information.

Fifty-one cities, included in an original DOE–2.1 data base, were selected because they included most major cities (Continental U.S., Alaska, and Hawaii) and covered the range of climate types in which there is significant building construction and acquisition.

This data base was subsequently modified through climate analyses conducted by LBL. Locations were eliminated if the changes in both heating and cooling were within 5% of that of another base city. This resulted in the elimination of eight cities. At the same time two new locations were added for

better coverage, resulting in 45 base cities (also including all of Continental U.S., Alaska, and Hawaii).

To develop results for other locations the following climate data was used: (1) Heating and cooling degree days for the 3400 National Oceanographic and Atmospheric Administration (NOAA) stations (20-year average 1951–1980), and (2) latent humidity calculated from Test Reference Year (TRY) weather tapes for 51 U.S. locations.

IV. Summary of Guide

The draft guide is written for those who desire a simple procedure for designing and constructing energy conserving homes. The calculation techniques may be used to demonstrate how investment in energy conservation strategies in different regions may increase monthly disposable income by reducing fuel bills. The guide may be used by home builders interested in improving energy efficiency and using energy cost savings as a marketing strategy to sell homes.

The design and construction of those parts of the home, which affect energy use, are influenced by a number of local, state and federal building codes and standards. These standards are designed to improve the quality and durability of the homes, but are not universally sensitive to energy efficient design. In addition, product manufacturers, lenders, and home buyers are all market forces influencing the energy efficiency of the home.

Home builders confronted with these sometimes conflicting pressures have had to rely on intuition, experience and, where available, complicated energy use and economic analysis tools to estimate the costs and savings of options designed to reduce energy use in the home. Many of the tools are ill-suited to this purpose, difficult to use and may not cover a sufficient range of possible energy improvements to allow comparisons. For example, one tool might be useful for estimating the energy and cost impacts of increased insulation levels but is not applicable for estimating the impacts from the installation of a solar domestic hot water system.

By providing user friendly energy and economic analysis procedures, the guide fills a number of gaps. First, they allow the home builder to evaluate the impact on energy use of an array of options. Next, local energy costs may be utilized to more accurately estimate the dollar savings from a given option.

Finally, by providing an easy-to-use tool for economic analysis, the guides allow the savings in energy costs to be compared with the costs of purchasing and installing the option to reveal the "net" savings to the homeowner over a period of a year. Demonstrating and documenting estimated dollar savings in this way is not only an excellent marketing tool, but it also provides data to convince a lender to finance the cost of the improvement. In addition, lenders, concerned with a potential home buyer's ability to afford a mortgage, are beginning to view energy costs as an important consideration in deciding whether or not a loan is secure. Application of this tool may encourage that trend.

V. Use of Guide

The guidebook is divided into three main chapters and an appendix. The chapters are entitled:

- Chapter 1. Overview and Using the Guide.
- Chapter 2. Design and Construction.
- Chapter 3. Selecting Energy Conservation Options.
- Appendix. Estimating Local Energy Costs.

The first chapter introduces the guide and provides a road map for using the materials presented. The second chapter contains construction, design and specification information on the energy conservation options discussed in the third chapter. Worksheets are provided which, when used in conjunction with the slide rule, are useful in selecting those energy conservation options which are most cost-effective.

The worksheets are divided into two parts. The first describes the characteristics of a "Comparison Home". The comparison home is used as a benchmark against which the energy savings of various conservation options are compared. The comparison home is representative of construction specifications typically used by home builders. The second part of the worksheet is used to identify how various components and systems (the "OPTIONS") which when added to, or substituted in, the comparison home, influence the amount of energy the home is expected to use.

Separate worksheets are provided for evaluating options in each of the major areas of energy use: space conditioning, domestic hot water and appliances. Options from all three worksheets are compared and the final selection of options is made by the home builder using a set of economic worksheets.

It is anticipated that the guide will aid the home builder in assisting the potential home buyer in selecting and financing energy conservation options. Further, by covering the most popular and effective options from each of the major areas of energy use (space conditioning, domestic hot water, and appliances), the guide helps identify a 'balanced' package of options.

The discussion which follows describes in more detail the information contained in each separate chapter of the guidebook.

Design and Construction

This chapter discusses the characteristics, affecting heating and cooling, which contribute to the overall energy efficiency of the home. The chapter is intended to be used with the slide rule and contains descriptions of energy efficient construction techniques required to achieve the performance levels estimated by the slide rule analysis procedure.

The design and construction information in the guidebook is divided into individual sections providing recommended techniques for constructing or installing each of the options evaluated by the slide rule.

It is suggested that interested persons carefully note these discussions to ensure that the home will be built properly from an energy efficiency standpoint, and that the assumptions built into the slide rule are, in fact, reflected in the construction of the actual home. In order to make these assumptions absolutely clear to the home builder, a summary is provided at the end of each discussion explicitly listing the assumptions for the particular component being reviewed.

Selecting Energy Conservation Options

The first section of this chapter explains the use of the space conditioning worksheet. The worksheet, which is filled in using the energy savings calculated from the slide rule, is designed to calculate the actual energy costs for a "comparison home" and for a series of "options" in which one or more of the characteristics of the comparison home have been changed. Properly completed, the worksheet gives the home builder a clear indication of the energy use implications for a variety of alternative methods for designing and constructing a particular home for a particular location. The information contained on the worksheet is used in the economic evaluation technique described below.

The second section of the selecting energy options chapter discusses the energy performance characteristics of the domestic hot water system in the home. The Federal Trade Commission (FTC) promulgated "Energy Guide" performance labels form the basis for

the energy use and energy cost analyses provided in this section.

A method is also provided for fine tuning the information displayed on these labels with respect to the location of a particular home, its particular energy costs, and its system characteristics. The resultant simple analysis technique allows the energy cost savings associated with domestic hot water energy conserving options to be compared. As in the preceding space conditioning section, a worksheet is provided comparing the energy costs of the various system and energy conservation options being considered.

Once completed, the worksheet give the home builder a simple and clear indication of the cost implications of utilizing a particular domestic hot water system. The information, tabulated on the worksheet, can be used with the economic evaluation technique discussed below.

The appliance section of this chapter reviews the effects on annual fuel costs of the major appliances in the home. As in the domestic hot water discussion, the FTC energy guide labels which appear on appliances manufactured since May 1980, form the basis of the energy use and cost analysis method presented.

The appliances analyzed in this section are:

- Refrigerators.
- Refrigerator-Freezers.
- Freezers.
- Dishwashers.
- Clothes Washers.

The use of the labels to calculate and compare the energy costs of various different pieces of equipment is explained in detail in the section.

A worksheet is provided and the home builder can quickly assess the energy cost implications of specifying particular pieces of equipment and of substituting other, more energy efficient models. This worksheet, like those for space conditioning and domestic hot water, is also designed to be used with the economic evaluation technique.

Having calculated the energy use and energy cost characteristics for a variety of space conditioning, domestic hot water, and appliance options and recorded this information on the appropriate worksheets, the next step is to decide which of the options are most appropriate for a particular home in a particular location. This last section of the selecting energy options chapter provides an easy-to-use economic evaluation technique for making decisions based on the relative cost effectiveness of each of the options being considered.

The technique is focused on three final worksheets which incorporate information from the preceding three worksheets and which, when properly completed, display the options for a particular home, ranked according to the order in which they are most cost effective. The resulting list of individual options can be combined into packages of options with recalculated total energy cost savings information. These packages with their accompanying technical and financial documentation will provide valuable tools for the successful marketing of cost effective, energy conserving housing.

Slide Rule User Brochure

A separate brochure entitled "Using the Slide Rule and Modifiers" outlines the procedures for quantifying energy savings due to the energy conservation options. The slide rule and additional analysis techniques are used to calculate the change in energy use associated with changing one or more of the characteristics of the new home. Energy conservation options fall into one of the following categories:

- Ceiling Insulation.
- Wall Insulation.
- Floor Insulation.
- Infiltration.
- Floor Area (as a base parameter).
- Window Characteristics.
  a. Sash material.
  b. Glazing layers.
  c. Area.
  d. Glazing materials.
- Location (climate zone).
- Equipment and Controls (efficiency).
- Fans (Whole House Type).
- Movable Window Insulation.
- Exterior Building Color.
- Thermostat Setback.
- Attached Sunspace.
- Building Orientation.
- Passive Solar.

Different sets of slide rule inserts will be provided for each of the 45 locations, thus simplifying the necessary calculations. The slide rules alone will provide quick, reliable estimates of the changes in home energy use resulting from changes in particular building characteristics.

VI. Questions for Public Comment

DOE welcomes the comments of interested persons. However, DOE is particularly interested in obtaining the views of the public, including home builders, mortgage institutions and other interested persons on the questions set forth below. DOE would appreciate receipt of all written comments and related information no later than May 22, 1984.

1. Are the documents useful to home builders in marketing conservation measures and to home buyers in purchasing energy conservation options?
2. Would a guidebook oriented to the energy related concerns of home buyers be appropriate and/or necessary?
3. Are the construction details useful, clearly presented and accurately discussed?
4. Does the economics section provide the information of most concern to sellers and purchasers?
5. Should an energy label or sticker, based on the guide, be developed for attachment to the home?

VII. Availability of Draft Guide

Copies of the slide rule, slide rule user brochure, guidebook and two technical support documents are available for inspection at the DOE Freedom of Information Office, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, D.C., 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, and at each of the DOE Regional Support Offices, which are located at the following addresses.

U.S. Department of Energy, Boston Support Office, 150 Causeway Street, Room 1002, Boston, Massachusetts 02114.

U.S. Department of Energy, New York Support Office, 26 Federal Plaza, Room 3437, New York, New York 10278.

U.S. Department of Energy, Philadelphia Support Office, 1421 Cherry St., Philadelphia, Pennsylvania 19102.

U.S. Department of Energy, Atlanta Support Office, 1655 Peachtree, N.E., 8th Floor, Atlanta, Georgia 30309.

U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Argonne, Illinois 60439.

U.S. Department of Energy, Dallas Support Office, P.O. Box 35228, 2626 W. Mockingbird Lane, Dallas, Texas 75235.

U.S. Department of Energy, Kansas City Support Office, 324 East Eleventh Street, Kansas City, Missouri 64106.

U.S. Department of Energy, Denver Area Office, P.O. Box 26247–Belmar Branch, 1075 South Yukon Street, Lakewood, Colorado 80226.

U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, California 94612.

Copies of the slide rule, slide rule brochure, a guidebook, technical support documents may be obtained by making a written request to: Hearings and Dockets Branch, Office of Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue,

SW., Room 6B–025, Washington, D.C. 20585. Because supplies of each are limited, respondents are asked to request the documents only if they plan to submit comments.

VIII. Comment Procedures

All interested persons are invited to submit written comments to DOE. The correspondence should be mailed to: Hearings and Dockets Branch, Office of Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Room 6B–025, Washington, D.C. 20585. Comments should be identified on the document and envelopes submitted to DOE with the designation "Affordable Housing through Energy Conservation". Five (5) copies should be submitted. All written comments and related information should be received by DOE no later than May 22, 1984, to receive consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination, pursuant to DOE's regulations on confidentiality (10 CFR Part 1004).

(Energy Conservation Standards for New Buildings Act of 1976, as amended, 42 U.S.C. Sec. 6831 *et. seq.*; the Department of Energy Organization Act, 42 U.S.C. Sec. 7101 *et seq.*)

Issued in Washington, D.C., January 9, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 84–4676 Filed 2–21–84; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of issuance of proposed decision and order for the implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals is seeking comments on a Proposed Decision and Order concerning refund procedures for moneys obtained from 189 crude oil producers and resellers.

DATE AND ADDRESS: Comments may be submitted on or before March 23, 1984 and should be addressed to:

Marcia B. Proctor, Chief, Docket and Publications Branch, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Deputy Assistant Director, Roger J. Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–2383.

SUPPLEMENTARY INFORMATION: The Department of Energy's Office of Hearings and Appeals (OHA) has issued a Proposed Decision and Order which sets forth its tentative conclusions concerning appropriate refund procedures to be adopted for disposition of moneys obtained through consent orders, remedial orders and stipulated settlements entered into by the DOE with 189 crude oil producers and resellers. The names of those firms and individuals are listed in the Appendix to the Proposed Decision which follows this Notice. The OHA proposes that a two-stage refund process be followed. In the first stage, the OHA proposes to accept refund applications in these 189 cases to be adjudicated in the same manner and using the same principles as applied to those refund applications filed pursuant to two earlier OHA determinations, *Office of Enforcement: In the Matter of Alfred B. Alkek*, 47 FR 2196 (1982), and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 47 FR 16381 (1982). As for the second stage, the OHA proposes that all residual funds (i.e., moneys remaining after all refund applications have been adjudicated) in cases in which the refund moneys were deposited in the DOE escrow account by December 17, 1982 be deemed to have been disbursed already to the states and territories of the United States by operation of section 155 of the Further Continuing Appropriations Act, 1983, Pub. L. No. 97–377 (popularly known as the Warner Amendment). The OHA reserves until a later date its determination as to (i) the appropriate disposition of any residual funds that may exceed the funds paid out pursuant to the Warner Amendment and (ii) the appropriate distribution of funds from cases in which the refund moneys were deposited with the DOE after December 17, 1982.

Specific information concerning any individual consent order, remedial order or stipulated settlement underlying these special refund proceedings may be obtained by contacting the persons whose names are listed at the beginning of this Notice. The Office of Hearings and Appeals will accept comments on the Proposed Decision that are filed within 30 days of the date of publication of this Notice in the **Federal Register.**

Issued in Washington, D.C. on February 3, 1984.

February 3, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 3, 1984.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Petitioner: Economic Regulatory Administration: In the Matters of A. Johnson & Company, Inc. and others listed in Appendix.

Date of Filing: October 13, 1983 (except Cotton Petroleum Corp.); December 29, 1983 (Cotton Petroleum Corp.).

Case Number: HEF–0472, and others listed in Appendix.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially-designed process to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA has filed Petitions for the Implementation of Special Refund Procedures in connection with consent orders, remedial orders and stipulated settlements which it entered into with A. Johnson & Company, Inc. and 188 other firms and individuals. The names of each firm or individual, and the refund amount provided for by the corresponding consent order, remedial order or stipulated settlement are listed in the Appendix to this Decision and Order.(*1*) Pursuant to these orders, these parties have agreed to make refunds totaling approximately $77.6 million for violations and alleged violations of DOE pricing regulations. Those funds, most of which have already been paid to the DOE, are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.(*2*) As will be discussed in greater detail below, each alleged violation of the DOE pricing regulations in these cases is similar because it involves crude oil pricing violations, and the parties injured by each of the alleged or actual violations are for the most part identical. Therefore these cases have been consolidated for purposes of this Decision.

I. Regulatory Background

Each of the consent orders, remedial orders, and stipulations involved in this proceeding resulted from an audit or investigation conducted by the DOE and its predecessor agencies. As a result of these audits and investigations, the DOE alleged that the parties in each of these cases were involved in the sale of crude oil at prices in excess of those established in the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.

Those regulations generally required crude oil producers to determine the first sale price of crude oil on the basis of the level of production from a property during a specified base period, *i.e.*, the base production control level (BPCL). *See* 6 CFR 150.354; 10 CFR 212.72–.74. The term "property" was defined as the right to produce crude oil which arises from a lease or fee interest. 6 CFR 150.354(b)(2); 10 CFR 212.72. Crude oil production that did not exceed the BPCL for a particular property was generally subject to the lower tier ("old" oil) ceiling price rule. 6 CFR 150.354; 10 CFR 212.73. Crude oil production that exceeded the BPCL ("new" oil) could generally be sold without regard to the ceiling price rule prior to February 1, 1976, and at the upper tier ceiling price level after that date. 6 CFR 150.354(c)(2); 10 CFR 212.74(a). Prior to February 1, 1976, in months in which new oil could be sold from a property, additional volumes of crude oil could be sold as "released" oil at prices in excess of the applicable lower tier ceiling price level. 6 CFR 150.354(c)(3); 10 CFR 212.74(b). Additionally, crude oil produced from a "stripper well property" could generally be sold at market price levels. Producers and resellers of crude oil were generally required to certify in writing to each purchaser in the distribution chain the respective volumes of the various categories of price-controlled domestic crude oil included in each purchase. 10 CFR 212.131 (a)(4), (b)(1). Refiners were required to report these certifications to the DOE and its predecessors when they processed the crude oil to enable the agency to administer the Entitlements Program, 10 CFR 211.67.

The Entitlements Program, 10 CFR 211.67, was part of the comprehensive program administered by the DOE for the mandatory pricing and allocation of crude oil, residual fuel oil and refined petroleum products. As discussed above, the federal regulations on the price of crude oil created a price disparity between, on the one hand, foreign crude and uncontrolled domestic crude oil, and old and upper-tier (price-controlled) oil on the other hand. These price controls had an unequal effect on refiners because some refiners had greater access to the cheap old oil than others. Firms which had little or no access to price-controlled oil were forced to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many small, independent firms, with little or no access to price-controlled domestic reserves, experienced crude oil acquisition costs so high relative to the industry as a whole that those costs threatened their viability. To remedy these imbalances, the DOE established the Entitlements Program. 39 FR 31650 (1974); 39 FR 39740 (1974). Under the Entitlements Program, refiners with proportionally greater access to cheap price-controlled oil made cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. The program was designed to restore the competitive viability of the refining industry by generally equalizing among all domestic refiners the benefits associated with access to the lower-priced domestic crude oil.

II. Factual Background

The types of violations allegedly or actually committed by the parties who entered into the consent orders, remedial orders and stipulations involved in this proceeding fall into four categories. Most of the alleged violations concern firms which were "producers" of crude oil as defined in 10 CFR 212.31. They were alleged to have incorrectly certified "old" price-controlled crude oil they produced as "new" or "stripper well" oil, which was subject to less stringent price controls. The firms were therefore alleged to have overcharged purchasers by an amount per barrel which represents the difference between the "new" or "stripper well" prices and the maximum price permitted for "old" oil. The second type of violation involved concerns producers who were alleged to have sold "old" oil at levels in excess of the applicable ceiling price. In this type of case, the producers allegedly determined May 15, 1973 posted prices for crude oil incorrectly and thus sold crude oil at a price higher than that permitted by the regulations. The third type of violation concerns resellers that were alleged to have miscertified "old" crude oil which they owned and sold it at the higher "new" or world market level (uncontrolled) oil prices. The fourth type of violation concerns refiners who obtained greater entitlements benefits than they were entitled to receive because they failed to report or misreported miscertified crude oil which they received.

In most of these cases, the Government agreed to terminate the pending investigations, administrative proceedings, and court litigation through a consent order or stipulation of settlement and the parties agreed to pay a stipulated sum of money to the DOE. Notices of some of the consent orders were published in the **Federal Register**.(*3*) Interested parties were provided an opportunity to comment on the terms of the consent orders and to submit written notices to ERA of potential claims against the settlement funds. In a number of cases the DOE also issued press releases concerning the consent orders. In a few of these cases the funds were remitted to the DOE as the result of a final remedial order or court-approved stipulation of settlement. The respective dates of the publication of the final consent orders and remedial orders, and the dates of the court orders approving the settlements, are set forth in the Appendix to this Decision. In some cases parties have submitted claims for a portion of the funds.(*4*)

III. Jurisdiction

The procedural regulations of the Department of Energy set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the Department of Energy is unable to identify readily persons who were or may have been injured by alleged or adjudicated violations. 10 CFR 205.280. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the records developed in each of the cases involved in this proceeding, we have concluded that the implementation of Subpart V proceedings in each case in appropriate. In each of the cases there is a significant degree of difficulty inherent in identifying the persons who were injured by the alleged or actual overcharges. Moreover, even in cases where an injured person can be identified, it is difficult to ascertain the level of refunds that each person should receive. At one time crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to

overcharged parties including ultimate consumers. However, since the President has exempted crude oil and all refined petroleum products from the DOE regulatory program, *see* Exec. Order No. 12287, 46 FR 9909 (1981), price rollbacks are no longer an effective means of refunding money to purchasers who were overcharged in the past.

Moreover, to refund money to the parties actually affected by the alleged overcharges, a determination must be made regarding the extent to which purchasers of the crude oil involved absorbed the overcharges or passed the higher costs through to downstream customers by raising their own sales prices. In these cases, therefore, the persons entitled to refunds are not readily identifiable, and the amount of the refunds that persons should receive are not readily ascertainable. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The Office of Hearings and Appeals therefore will accept jurisdiction over the funds received by the DOE in settlement of the enforcement proceedings underlying the Petitions for Implementation of Special Refund Proceedings set forth in the Appendix to this Decision.

IV. Proposed Refund Procedures

We have previously established refund procedures for consent orders involving the same type of crude oil-related violations as those which are the subject of the present proceedings. In *Office of Enforcement: In the Matter of Alfred B. Alkek*, 9 DOE ¶ 82,521 (1982) (hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982) (hereinafter cited as *Adams*), which involved consent orders and remedial orders with 58 firms, we established a two-stage refund procedure for consent order and remedial order funds received as a result of alleged crude oil regulatory violations.[5] In *Alkek* and *Adams*, we noted that the parties who purchased the crude oil covered by the consent orders involved would not necessarily qualify for refunds. Instead, only those parties who could demonstrate they were adversely affected by the alleged violations would be appropriate refund recipients. We pointed out that the entities which appeared to be most directly affected by the alleged crude oil price violations in the consent orders involved in these proceedings are refiners that directly purchased the crude oil which was the subject of the individual consent orders, and the other refiners that participated in the Entitlements Program, 10 CFR 211.67. However, we stated our view that these entities might not be the most appropriate recipients of the total pool of refund money available because the effects of crude oil miscertifications were generally spread by the Entitlements Program through the entire United States and among all domestic refiners, who in turn were permitted by DOE regulations to pass on the increased crude oil costs.

In *Alkek* and *Adams* we further stated that it was our belief that because of the Entitlements Program, refiners that purchased crude oil from the parties that had signed these consent orders were not injured in a manner distinct from all other refiners. This is because the amount the individual refiners paid in excess of the controlled price for the miscertified crude oil was balanced by the extra benefits they received by the operation of the Entitlements Program. Thus, we reasoned that if all refiners as a group were not appropriate refund recipients, individual refiners which directly purchased the crude oil involved also would not be appropriate refund recipients. Secondly, we stated that through the operation of the Entitlements Program, all refiners lost benefits and thus incurred increased costs as a result of the miscertifications of crude oil. We noted that to some extent the refiners probably passed on these increased costs to subsequent purchasers. Also, to the extent these costs were not passed on, we stated that because of such factors as the accumulations of refiners' banks of increased costs, and changes in prevailing crude oil costs and price levels during the relatively lengthy period covered by the consent orders, it would be extremely burdensome to compute with precision the degree to which each refiner absorbed any increases in costs engendered by the miscertifications. We therefore questioned the practicality of channeling the consent order funds to Entitlements Program participants. *Adams* at 85,292. We also noted that the decontrol of crude oil was another factor which weighed against making refunds directly to the refiners that purchased the crude oil or to all refiners that participated in the Entitlements Program. We observed that refiners were no longer required to reflect as a decrease in the cost of crude oil any refunds which they received and thus affect maximum lawful selling prices of covered products. Consequently, it is unlikely that the parties further down the distribution chain that were likely to have been adversely affected by the alleged overcharges would receive some benefit associated with refunds made to refiners.

We did note, however, that certain identifiable parties might be able to show demonstrable injury from the alleged violations. We found that one such class of potentially injured parties was the group of direct purchasers of refiners that obtained crude oil from the parties which entered into consent orders in which an improper computation of the base price for crude oil was alleged. We noted that because this oil appeared to be properly certified, the alleged overcharges were not passed through the mechanisms of the Entitlements Program. We stated that these direct purchasers and refiners thus may have borne the effect of such overcharges and may be eligible for refunds to the extent that they could show that the alleged overcharges were not passed through to subsequent purchasers. *Alkek* at 85, 133–34.

Refiners were additionally included in the second class of potentially injured parties we identified. This class is composed of refiners that obtained crude oil from parties that entered into consent orders concerning violations alleged to have occurred before the commencement of the Entitlements Program on November 1, 1974. Because the effects of these overharges had not been passed through the Entitlements Program, we stated that these refiners were directly affected and may have absorbed the effects of the alleged overcharges. Thus we concluded that refiners in this class could be eligible for refunds to the extent they could show that they did not pass these increased costs on to subsequent purchasers.

We also stated that, for periods subsequent to November 1, 1974, refiners and subsequent purchasers that obtained crude oil or refined products produced or sold by the parties that entered into the consent orders involved in the proceeding could be eligible for refunds if they could show that the Entitlements Program did not negate the adverse effects caused by the alleged violations and if they could accurately calculate the impact of those effects on them. *Alkek* at 85,136–37. Finally, we noted that if our tentative conclusions were correct, the effects of the alleged overcharges were spread among all refiners by the Entitlements Program and were largely passed on by them and subsequent purchasers. In this case, at least some of the effects of the alleged overcharges would actually have been borne by ultimate consumers of refined products, and we concluded that consumers could also be appropriate

refund recipients. However, we determined that it would be premature for consumers and consumer groups to file Applications for Refund until the refiners' claims had been resolved. *Alkek* at 85,136.

Since the issuance of the *Adams* and *Alkek* Decisions, we have identified an additional class of claimant that may be able to show that it was injured by the overcharges. We are aware that some firms may have been end-users of crude oil, i.e., consumers who used crude oil as industrial boiler fuel. These consumers of crude oil would also be eligible to file claims for refunds in these cases.

As noted above, the types of alleged violations that underlie the present proceeding are substantially the same as those that were the subject of the *Alkek* and *Adams* proceedings. In particular, the Entitlements Program would have had the same distributive effect on the alleged and actual overcharges covered by these orders. We therefore propose to establish first-stage refund procedures for these 189 cases in which we will accept first-stage refund applications to be adjudicated in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek* and *Adams* determinations.

V. Second Stage Refund Procedures

Because of the difficulty inherent in establishing injury to parties in the majority of these cases, there is likely to be a substantial portion of these refund moneys remaining after all successful first-stage claimants have been paid. In the October 13, 1983 Petition for the Implementation of Special Refund Procedures which initiated all but one of these refund proceedings, the ERA stated that $200 million of the funds collected through the 453 orders covered by the October 13 Petition had already been distributed to the states and territories of the United States pursuant to a congressional mandate. *See Section 155, Further Continuing Appropriations Act*, 1983, Pub. L. No. 97–377 (hereinafter cited as the Warner Amendment). Congress specified in the Warner Amendment that only moneys that were deposited in the DOE escrow account as of December 17, 1982, and were not likely to be paid to identified injured persons should be included in the distribution to the states. Consequently, some of the escrowed funds that are the subject of this proceeding are possible sources of the Warner Amendment distribution.

In the *Adams* and *Alkek* Decisions, which we have adopted as the model for the first-stage procedures in this determination, we suggested that any residual funds be distributed to the governments of all of the jurisdictions that were covered by the Mandatory Petroleum Price Regulations in the proportion which each jurisdiction's share of petroleum products consumption during the period of controls bore to national consumption of petroleum products. We proposed this manner of distribution because of the national impact alleged crude oil overcharges would have had through the operation of the Entitlements Program. The same rationale might be applied to the residual funds in the present cases where the funds were on deposit as of December 17, 1982, and, in fact, the manner by which Congress allocated the Warner Amendment funds among the states parallels our proposed *Adams* and *Alkek* distributions. Consequently, it might be said that Congress has already disposed of the residual funds in the cases whose funds were subject to the Warner Amendment. We therefore propose that all residual funds in these cases be deemed to have already been disbursed to the states by operation of the Warner Amendment.

With respect to cases in which escrow funds were received after December 17, 1982, we note that we reserved our final determination concerning the distribution of the *Adams* and *Alkek* second-stage funds until the amount of residual funds was established. We shall likewise hold in abeyance our determination as to appropriate second-stage procedures for these cases until we know how much money will remain after first-stage claims are paid. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1982). Views concerning possible second-stage resolutions are contained in *In Re Stripper Well Exemption Litigation*, Case No. HEF–0025, 48 FR 57608 (1983).

It Is Therefore Ordered That:

The refund amounts provided in conjunction with the consent orders, remedial orders, and stipulations of settlement listed in the Appendix to this Decision and Order shall be distributed in the manner set forth in the foregoing Decision.

Footnotes

(1) Of the 189 cases listed in the Appendix, all but one were part of a Petition for the Implementation of Special Refund Procedures filed by the ERA on October 13, 1983. A petition involving payments remitted pursuant to a stipulation of dismissal involving Cotton Petroleum Corporation was filed on December 29, 1983. Copies of the respective refund orders and supporting materials filed by the ERA may be obtained from the OHA Public Docket Room. However, inasmuch as the majority of these orders contain little specific information regarding the crude oil pricing violations that were actually alleged prior to settlement, we have not attempted to include in this Decision any specific identification of the violations underlying these consent orders, remedial orders and stipulated settlements.

(2) Some of the orders involved require payments to be made in installments through 1984. All funds are deposited as collected into an escrow account which, along with accrued interest, totaled approximately $97,550,000 as of December 31, 1983.

(3) The DOE procedural regulations require the publication for public comment in the **Federal Register** of consent orders which call for the payment of sums exceeding $500,000. *See* 10 CFR 205.199J(b).

(4) All claims received by the ERA were included in the materials which it filed with its October 13, 1983 and December 29, 1983 Petitions for the Implementation of Special Refund Procedures. All of those claimants will receive a copy of this Proposed Decision and Order and be given an opportunity to file comments on it. In addition, all of those parties will receive a copy of the final Decision and Order setting forth the procedures for filing an application for refund.

(5) We subsequently added to the Alkek/Adams "pool" the portion of the Amoco consent order funds that was allocated for crude oil claims. *See* Office of Special Counsel, 10 DOE ¶ 85,048 at 88,203. We have also discussed the potential distribution of crude oil overcharge funds in In re Stripper Well Exemption Litigation, Case No. HEF–0025, 48 FR 57608 (1983).

APPENDIX

Case name	Case No.	Amount	Reference
A. Johnson & Company, Inc	HEF–0472	$124,564	46 FR 29502 (1981).
ADCO Producing Company, Inc	HEF–0313	99,522	45 FR 82989 (1980).
Adolph Coors Company	HEF–0283	10,000	(1)
Al Brown Oil Operator	HEF–0334	31,203	44 FR 63136 (1979).
Alpar Resources Inc	HEF–0314	313,000	46 FR 47252 (1981).
Amax Petroleum Corporation	HEF–0315	182,450	2 DOE Par. 83,004 (1978).
Aminoil USA, Inc	HEF–0317	2,600,000	45 FR 67716 (1980).
Arizona Fuel Corporation	HEF–0463	490,441	681 F.2d 797 (TECA 1982).
Armour Oil Company	HEF–0278	225,000	(1)

APPENDIX—Continued

Case name	Case No.	Amount	Reference
Art Machin & Assoc	HEF-0395	25,000	(1)
Atlantic Oil Company	HEF-0318	5,476	45 FR 65281 (1980).
Atlantic Oil Corporation	HEF-0319	60,000	45 FR 50852 (1980).
Axis Petroleum Company	HEF-0320	52,541	(1)
B & M Operating Co., Inc	HEF-0321	410,000	(1)
Barnhardt	HEF-0322	630,000	46 FR 22926 (1981).
Barton, A.L.	HEF-0279	100,000	(1)
Bass Enterprises Production Co	HEF-0323	497,500	46 FR 38120 (1981).
Baxter, Murphy H	HEF-0324	200,000	46 FR 21411 (1981).
Belco Petroleum Corporation	HEF-0325	100,497	44 FR 42311 (1979).
Berg, Laney, & Brown	HEF-0326	240,000	45 FR 58945 (1980).
Bettis, Boyle & Stovall	HEF-0327	50,000	46 FR 40781 (1981).
Big Six Drilling Company	HEF-0330	50,000	45 FR 40202 (1980).
Big-Tex Crude Oil Company	HEF-0280	400,000	46 FR 35722 (1981).
Biglane Operating Company	HEF-0329	65,701	45 FR 34342 (1980).
Bill Forney, Inc	HEF-0362	480,000	(1)
Blackwood & Nichols Co., Ltd	HEF-0331	160,000	46 FR 31045 (1981).
Bock & Bacon	HEF-0332	180,000	46 FR 45408 (1981).
Bolin Oil Company	HEF-0333	27,500	46 FR 33084 (1981).
Buxton, F. M	HEF-0335	50,285	8 DOE Par. 83,027 (1981).
C & K Petroleum Inc	HEF-0336	265,000	(1)
C.D. Hollingsworth & Assoc	HEF-0375	147,111	(1)
C.N. Operating Company	HEF-0337	325,000	46 FR 42503 (1981).
Cajun Energy Inc	HEF-0281	45,000	46 FR 42096 (1981).
Caulkins Oil Company	HEF-0338	37,248	(1)
Centura, Inc	HEF-0339	115,000	46 FR 40790 (1981).
Century Oil Management, Inc	HEF-0340	324,316	44 FR 67498 (1979).
Cobra Oil & Gas Corporation	HEF-0342	30,000	46 FR 45409 (1981).
Coffield Pipeline Company	HEF-0282	85,000	46 FR 35723 (1981).
Comanche Oil Company	HEF-0343	170,000	46 FR 35331 (1981).
Cooper & Brain Inc	HEF-0344	465,212	45 FR 27466 (1980).
Cotton Petroleum Corp	HEF-0486	1,156,493	(N.D. Okla. 9/8/83).
Cross Oil & Ref. Co. Arkansas	HEF-0464	800,000	46 FR 29305 (1981).
Culpepper Oil Company	HEF-0346	355,000	(1)
Da Vinci Company Inc	HEF-0284	500,000	45 FR 52863 (1980).
Decalta International Inc	HEF-0347	134,357	45 FR 46159 (1980).
Depco Inc	HEF-0348	335,000	(1)
Diamond Shamrock Corporation	HEF-0465	10,301	46 FR 45667 (1981).
Dolley, Chester F	HEF-0349	214,046	45 FR 65282 (1980).
Earth Resources	HEF-0466	626,000	45 FR 81256 (1980).
Eddy Refining Company	HEF-0467	24,892	46 FR 22259 (1981).
Edwards Producing Co., Inc	HEF-0352	106,732	45 FR 29878 (1980).
El Paso Natural Gas Company	HEF-0353	430,100	45 FR 59942 (1980).
Elm City Filling Stations	HEF-0468	106,770	(1)
Encorp Inc	HEF-0285	5,000	46 FR 26896 (1981).
Energy Acquisition	HEF-0354	299,000	(1)
Energy Development of California	HEF-0355	41,000	44 FR 67498 (1979).
Energy Services, Inc	HEF-0356	750,000	47 FR 19401 (1982).
Engle Enterprises Inc	HEF-0286	20,000	(1)
Equipment, Inc	HEF-0357	10,000	(1)
Estate of Claire-Benz-Stoddard	HEF-0341	50,000	44 FR 38995 (1979).
Estate of Loyce Phillips	HEF-0423	36,840	(1)
Exchange Oil & Gas Corporation	HEF-0358	151,006	46 FR 35332 (1981).
Farmers Union Central Exchange	HEF-0359	150,000	46 FR 24227 (1981).
Ferguson Oil Company	HEF-0360	98,323	6 DOE Par. 83,003 (1980).
Fletcher Oil & Refining Co	HEF-0469	41,210	46 FR 43484 (1981).
Florida Gas Exploration Co	HEF-0361	890,141	(S.D. tex. 4/20/81).
Franks, John	HEF-0363	289,015	9 DOE Par. 83,041 (1982).
Franks, John & Duggan, Don H	HEF-0350	144,499	9 DOE Par. 83,041 (1982).
Freeport Minerals Company	HEF-0364	10,508	44 FR 34631 (1979).
Geer Tank Trucks, Inc	HEF-0287	5,000	46 FR 43484 (1981).
General Exploration Company	HEF-0365	100,000	46 FR 12263 (1981).
Golden Eagle Oil Company	HEF-0470	300,000	(1)
Gonsoulin Energy Corporation	HEF-0288	96,000	(1)
Grace Petroleum Corporation	HEF-0366	1,450,000	46 FR 45667 (1981).
Guam Oil & Refining Company	HEF-0471	2,500,000	47 FR 19733 (1982).
Hankamer, Curtis	HEF-0367	410,000	46 FR 27995 (1981).
Hanover Mgmt. Company	HEF-0368	175,000	44 FR 66022 (1979).
Hassie Hunt Exploration Co	HEF-0370	158,608	(1)
Hawn Brothers	HEF-0371	70,000	45 FR 54412 (1980).
Hawthorne Oil & Gas Corp	HEF-0372	520,000	48 FR 28317 (1983).
Hewitt & Dougherty	HEF-0373	180,000	44 FR 48746 (1979).
HNG Oil Company	HEF-0374	379,616	(1)
Houston Oil & Minerals Corp	HEF-0376	3,985,000	46 FR 37751 (1981).
Howell Drilling Inc	HEF-0377	28,500	45 FR 53205 (1980).
Hudson & Hudson	HEF-0378	750,000	48 FR 22614 (1983).
Hunt Oil Company	HEF-0380	14,162	10 DOE Par. 83,016 (1982).
Hunt D.H	HEF-0381	996,540	46 FR 61499 (1981).
Independent Oil Producers Agcy	HEF-0290	290,185	46 FR 23107 (1981).
Inland Crude Purchasing Corp	HEF-0291	21,000	(1)
Johnson, E. Lyle	HEF-0384	44,051	(2)
Karchmer Pipe & Supply Co. Inc	HEF-0386	107,000	45 FR 50624 (1980).
Kimbark Operating Company	HEF-0387	11,000	46 FR 25339 (1981).
Kirkpatrick Oil & Gas Company	HEF-0388	260,000	8 DOE Par. 83,004 (1981).
Lebsack Oil Production Inc	HEF-0390	18,500	(1)
Lenoir M. Josey Inc	HEF-0385	262,500	(1)
Lindsey, W.W. & Elliott, W.E	HEF-0391	25,000	(1)
Lobo Oil Corporation	HEF-0392	205,072	23 FERC Par. 61,252 (1983).
Loeb, Herman	HEF-0393	72,993	(1)
Lyons Petroleum Inc	HEF-0394	192,620	46 FR 26680 (1981).
MacKellar Inc	HEF-0396	38,485	(1)
Marion Corporation	HEF-0475	703,570	46 FR 26370 (1981).
Marshall Pipe & Supply Co	HEF-0397	52,000	46 FR 47254 (1981).

APPENDIX—Continued

Case name	Case No.	Amount	Reference
MCBO Oil Company	HEF-0398	90,000	(1)
McCormick Oil & Gas Corp	HEF-0399	92,000	(1)
Meason Optg. Company	HEF-0400	68,120	44 FR 43506 (1979).
Mertz, Bruce	HEF-0401	62,098	44 FR 45662 (1979).
Mesa Petroleum Company	HEF-0402	340,000	45 FR 70970 (1980).
Mid-Plains Petroleum Company	HEF-0297	120,000	(1)
Mitchell, William	HEF-0403	72,993	(1)
Moncrief, W.A. Jr.	HEF-0404	1,100,000	44 FR 39581 (1979).
Moore & Miller	HEF-0405	30,111	46 FR 38954 (1981).
Mosbacher Production Company	HEF-0406	80,000	45 FR 49640 (1980).
Mosbacher Production Company	HEF-0407	180,000	46 FR 24623 (1981).
Mountain Fuel Supply Company	HEF-0408	275,000	45 FR 70969 (1980).
Mustang Fuel Corporation	HEF-0298	600,000	48 FR 27129 (1983).
National Coop Refinery Assoc	HEF-0409	95,000	46 FR 22428 (1981).
Nevada Refining Company	HEF-0476	137,621	(1)
NFC Petroleum Corporation	HEF-0410	249,684	(1)
Nielson Enterprises Inc	HEF-0411	325,000	46 FR 20588 (1981).
North Central Oil Corporation	HEF-0412	750,000	46 FR 50407 (1981).
Northeast Nat. Gas Company	HEF-0413	86,604	44 FR 43508 (1979).
NRG Oil Company	HEF-0300	114,375	(1)
Oil California Exploration Inc	HEF-0414	145,369	45 FR 47783 (1980).
Oilco	HEF-0301	5,000	(1)
OKC Corporation	HEF-0477	600,000	46 FR 28473 (1981).
Osage Oil & Transportation Inc	HEF-0302	177,000	(1)
Oxnard Refining Company	HEF-0478	789,108	46 FR 28473 (1981).
Panhandle Eastern Pipeline Co	HEF-0265	542,455	45 FR 15976 (1980).
Park, Robert E	HEF-0415	100,000	46 FR 5047 (1981).
Pauley Petroleum Inc	HEF-0416	27,242	(1)
Pawnee Petroleum Corporation	HEF-0417	676,562	46 FR 55754 (1981).
Payne Inc	HEF-0418	440,000	45 FR 54414 (1980).
Payne-Johnston & Byars	HEF-0419	89,000	(1)
Petroleum Consulting Services	HEF-0303	125,000	(1)
Petroleum Corp. of Texas	HEF-0420	100,000	44 FR 45664 (1979).
Petrominerals Corporation	HEF-0304	21,250	(1)
Phillips Oil Operating Company	HEF-0421	43,000	46 FR 28897 (1981).
Phillips, B.F. Jr.	HEF-0422	36,248	46 FR 24622 (1981).
Prudential Drilling Company	HEF-0424	162,500	(1)
R. Lacy, Inc.	HEF-0294	48,000	45 FR 55807 (1980).
R. Lacy, Inc.	HEF-0389	20,000	44 FR 68950 (1979).
R.H. Siegfried, Inc	HEF-0435	85,000	(1)
Ray M. Huffington Inc	HEF-0379	180,000	(1)
Riddle Oil Company	HEF-0425	1,100,000	46 FR 51429 (1981).
Roark & Hooker	HEF-0426	300,000	46 FR 12264 (1981).
Robinson Energy Corporation	HEF-0427	601,000	47 FR 19402 (1982).
Rose, Hubert	HEF-0428	75,000	44 FR 43507 (1979).
Ross Production Company	HEF-0429	100,000	45 FR 30672 (1980).
Rupe Oil Company Inc	HEF-0430	35,000	46 FR 17248 (1981).
Ryder Truck Rental Inc	HEF-0305	130,000	46 FR 30173 (1981).
Santa Fe Energy Products Co	HEF-0306	48,462	(1)
Sater, Ronald E	HEF-0431	62,098	44 FR 45662 (1979).
Sauder, Earl W	HEF-0432	296,622	(1)
Search Drilling Company	HEF-0433	94,205	46 FR 9986 (1981).
Secor Petroleum Company Inc	HEF-0307	47,500	(1)
Seminole Refining, Inc	HEF-0479	1,330,000	45 FR 55519 (1980).
Shenandoah Oil Corporation	HEF-0434	115,500	45 FR 58397 (1980).
Signal Petroleum	HEF-0437	1,500,000	47 FR 55267 (1982).
Southern Union/Midland-LEA	HEF-0308	300,000	(1)
Southland Drilling & Product	HEF-0438	23,014	(1)
Stevens Oil Company	HEF-0439	100,000	46 FR 35725 (1981).
Sundance Oil Company	HEF-0440	800,000	(D. Colo. 9/23/82).
Superior Oil Company	HEF-0441	9,800,000	48 FR 28474 (1981).
Tauber Oil Company	HEF-0309	575,000	48 FR 16316 (1983).
Texas American Petrochemicals	HEF-0310	10,000	(1)
Texas Oil & Gas Corporation	HEF-0442	1,718,800	45 FR 13803 (1980).
Texas Recovert Company	HEF-0443	81,335	(1)
Texland Petroleum	HEF-0444	280,000	(1)
Toco Corporation	HEF-0445	892,588	45 FR 74019 (1980).
Todd & Saunders Inc	HEF-0446	98,000	(1)
Transpac Petroleum Inc	HEF-0447	50,000	(1)
Travelers Oil Company	HEF-0448	125,332	45 FR 48325 (1980).
Twin Montana, Inc	HEF-0449	116,994	(1)
Twin Montana, Inc	HEF-0450	1,489,130	48 FR 22785 (1983).
TXO Oil Company	HEF-0311	150,000	(1)
Vallecitos Oil Company	HEF-0451	268,072	45 FR 47785 (1980).
Van Horn, James M., operator	HEF-0452	50,000	(1)
Varn Petroleum Company	HEF-0453	150,000	46 FR 26812 (1981).
Venture Trading Company	HEF-0312	17,946	(1)
Virginia Dare Oil Company	HEF-0454	45,000	(1)
Wadsworth Oil Company	HEF-0455	62,413	(1)
Walker, Kenneth	HEF-0292	495,000	(1)
Wall, Earl E	HEF-0456	335,000	(1)
Western Avenue Properties	HEF-0458	40,000	(1)
William Herbert Hunt Trust Est	HEF-0382	136,937	(1)
Williams Exploration	HEF-0459	13,000,000	47 FR 36265 (1982).
Wilshire Oil Co. of Texas	HEF-0460	40,632	(1)
Windfohr Oil	HEF-0461	223,500	(1)
Woods, Dalton J.	HEF-0462	93,546	22 FERC Par. 62175 (1983).

[1] Not published.
[2] No appeal filed.

[FR Doc. 84-4574 Filed 2-21-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a total of $24,000 (plus accrued interest) in consent order funds to members of the public. The funds are being held in escrow pursuant to a consent order involving Pan American Liquids Service Company and its subsidiary, Desertaire Oil & Gas Company, a reseller located in El Paso, Texas.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF-0061.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Pan American Liquids Service Company and its subsidiary, Desertaire Oil & Gas Co., which settled possible pricing violations in the firm's sales of propane and butane during the period November 1, 1973 through December 13, 1973.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute funds remitted by Desertaire and being held in escrow. The DOE has tentatively decided that the funds should be distributed in two stages in the manner utilized with respect to other consent order funds.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: January 16, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy—Special Refund Procedures

January 16, 1984.

Name of Petitioner: Pan American Liquids Service Co./Desertaire Oil & Gas Co.

Date of Filing: October 13, 1983.

Case Number: HEF-0061.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) of the DOE may petition the Office of Hearings and Appeals (OHA) to formulate and implement special refund procedures in order to remedy the effects of alleged violations of the DOE price and allocation regulations. See 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that OHA establish special refund procedures for the distribution of monies received pursuant to a consent order entered into by the DOE and Pan American Liquids Service Co. and its subsidiary, Desertaire Oil and Gas Co. (herein jointly referred to as Desertaire).

Desertaire is a reseller of propane and butane, and is located in El Paso, Texas. A DOE audit of Desertaire's business records revealed probable pricing violations with respect to the firm's sales of propane during the period from November 1, 1973 through December 13, 1973 (the audit period). On November 4, 1977, a Notice of Probable Violation was issued to Desertaire in connection with these alleged violations. In order to settle all claims and disputes between Desertaire and the DOE regarding the firm's compliance with DOE price regulations in sales of propane and butane during the audit period, Desertaire and the DOE entered into a consent order on February 19, 1980. In the consent order, Desertaire agreed to pay $24,000 to the DOE. Notice of the consent order was published in the **Federal Register**, 45 FR 13501 (February 29, 1980), and interested parties were invited to submit comments or notice of potential claims against the Desertaire settlement fund. No comments or claims were filed.

The procedural regulations of the DOE set forth general guidelines by which OHA may formulate and implement a plan of distribution for funds received as a result of enforcement proceedings. The Subpart V process is intended for use in situations where the DOE is unable to readily identify persons who are entitled to refunds or unable to readily ascertain the amounts that such persons are entitled to receive. For a detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *See Office of Enforcement*, 9 DOE ¶82,553 (1983); *Office of Enforcement*, 9 DOE ¶82,508 (1981).

We have considered the ERA petition to implement a Subpart V proceeding with respect to the Desertaire consent order fund and have determined that it is appropriate to establish such a proceeding. In so far as possible the $24,000 consent order fund should be distributed to Desertaire customers who were adversely affected by any overcharges that may have occurred in Desertaire's sales of propane and butane (the two covered products within the scope of the consent order) during the approximately six-week consent order period between November 1 and December 13, 1973. The NOPV that was issued to Desertaire identifies only one customer which Desertaire allegedly overcharged during the period. That firm is Farmland Industries, Inc. (Farmland) which, according to the information in the ERA's files, was Desertaire's only propane customer during the consent order period. Farmland is an agricultural cooperative association located in Kansas City, Missouri, which is owned by over 2,000 local cooperatives. Farmland provides petroleum products to farmers and ranchers throughout the midwestern United States through its local, cooperative members.

We propose to establish a claims procedure in which Farmland and any other firm that purchased propane or butane from Desertaire during the consent order period may apply for refunds. If Farmland applies for a refund, it will be required to submit data showing the volume of propane which it purchased from Desertaire during the consent order period and certify that it will distribute any refund it receives among its member cooperatives. Farmland will not be required to make the demonstration of injury generally required of reseller applicants in special refund proceedings. This is consistent with previous determinations of this Office in which agricultural cooperatives have been exempted from the demonstration of injury requirement provided they distribute the refunds they receive to their member cooperatives. *See OKC Corp./Chemical Express Carriers,* 11 DOE ¶85,051 (1983); *Tenneco Oil Co./Farmland Industries, Inc.* 9 DOE ¶82,597 (1982).

In the event that Farmland is the only claimant for a refund in this case, we may ultimately decide to distribute the entire Desertaire consent order fund to Farmland for distribution to its member-cooperatives. However, it would be premature to propose that alternative at this time. As indicated above, the Desertaire consent order covered sales of butane as well as propane during the period November 1, 1973 and December 13, 1973, and there may be other firms which purchased butane from Desertaire who would also be eligible for refunds. In addition, Desertaire may have had other customers who purchased propane during that period who were not mentioned in the NOPV or ERA records but who might be eligible for a portion of the funds obtained pursuant to the consent order. Furthermore, the possibility exists that Farmland may have passed a portion of the alleged overcharges along in sales to firms outside of its cooperative distribution system. For these reasons, we shall accept for consideration refund claims filed by other firms which purchased propane or butane from Desertaire during the consent order period, and from firms which believe they have been indirectly injured by Desertaire's propane or butane pricing practices during the consent order period.

All parties which believe they are entitled to a portion of the Desertaire settlement fund must submit documentation to support their claims. Any claimants who are end-users (which consumed the Desertaire product themselves) need not provide any documentation other than purchase verification in order to qualify for a refund. *Cf. Standard Oil Co. (Indiana/ Northwest Airlines, Inc.* 11 DOE ¶ 85,126 (1983) (end-users need not demonstrate injury).

As in order special refund proceedings, reseller applicants (wholesalers and retailers) will generally be required to demonstrate injury due to Desertaire's pricing practices, in addition to submitting documentation of their purchase volumes in order to be eligible for a refund. Injury in Subpart V proceedings has generally been construed to mean that alleged overcharges were absorbed by the claimant rather than passed along to the claimant's customers. *Id.* While there are a variety of means by which a claimant could make this showing, a reseller should generally demonstrate that market forces prevented it from increasing its sales prices to reflect any or part of the alleged overcharges. Also, a reseller advancing a refund claim must show that it maintained a "bank" of unrecouped product costs through the remaining period of price controls which is sufficient to accommodate the refund requested. This will help to confirm that the reseller did not subsequently recover the alleged overcharges by increasing its prices.

As in other special refund proceedings, we propose not to require reseller-claimants who purchased a relatively small amount of product from Desertaire to demonstrate injury. In prior cases, we have used a threshold purchase level of 50,000 gallons per month below which reseller applicants are not required to demonstrate injury in order to qualify for a refund. *See e.g., Office of Enforcement,* 8 DOE ¶ 82,597 (1981); *Office of Enforcement,* 9 DOE ¶ 82,551 (1982). In view of the fact that the consent order period in this case is approximately six weeks, we believe it would be appropriate to establish a threshold of 75,000 gallons of propane or butane. Thus, reseller applicants who purchased this amount or less of Desertaire propane or butane between November 1, 1973 and December 13, 1973 will not be required to make the demonstration of injury generally required of resellers.

These proposed procedures may be modified depending upon the comments submitted in response to this Proposed Decision. As indicated above, if Farmland files the only meritorious refund application, we may distribute the entire escrow account fund to Farmland, subject only to its agreement to distribute the refund among its member-owners.[1] If we receive claims from other eligible purchasers of propane or butane which satisfy the filing criteria we have tentatively established above, we intend to divide the settlement fund by the estimated total volume of product sold by Desertaire during the audit period in order to obtain a per gallon refund figure which would then be applied to the purchase volume data supplied by each successful claimant. This volumetric approach permits each successful claimant to receive a pro rate share of the total available fund.[2]

In the event that the entire consent order fund is not distributed to Farmland and other propane or butane customers of Desertaire or indirect purchasers of Desertaire product, we will establish procedures for a second stage of the proceeding. In that second stage, we may select from a number of alternatives. One option would be to deposit the remaining funds in the U.S. Treasury. Another would be to distribute the remaining monies to the state(s) in which Desertaire marketed its propane and butane. As in other cases, we would require that the state government(s) use the refunds for an energy related project which meets with our approval. *See Worldwide Energy Corp.,* 11 DOE ¶ 85,023 (1983).

We are unable at this time to determine what second stage option will be selected or whether a second stage will be necessary. These issues depend upon the amount of the consent order fund, if any, which remains after first stage claims are acted upon.

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order in this matter. Detailed filing instructions will be provided in the final Decision and Order. However, comments regarding our proposed disposition of the Desertaire consent order fund are solicited at this time and are due within

[1] Farmland will also be required to notify its member-owners that any refund is expressly conditioned upon redistribution of the refund by the local cooperatives to their own members. *See Standard Oil Co. (Indiana)/Agway, Inc.* 11 DOE ¶ 85,166 (1983).

[2] The volumetric method, which attributes injury on a uniform basis to each gallon of product sold, recognizes that the computation of specific overcharges in individual transactions would be impossible to establish and contrary to the purpose of the consent order which is to resolve the DOE enforcement action against Desertaire by means of a negotiated settlement. Since the volumetric method places all refund claimants on an equal footing and is relatively easy to administer, previous special refund Decisions have concluded that it is equitable, efficient, and the best available method of distributing refund monies. *Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,196–99 (1982).

30 days from the publication of this determination in the Federal Register. A copy of this Proposed Decision will be sent to the only identified customer of Desertaire, Farmland Industries, Inc. In addition, notice of this proceeding will be published in the Federal Register.

It Is Therefore Ordered That:

The $24,000 refund amount supplied by Desertaire Oil & Gas will be distributed in accordance with the foregoing determination.

[FR Doc. 84-4571 Filed 2-21-84; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy hereby gives notice of the procedures to be followed in refunding $2,000,000 (plus accrued interest) in consent order funds to members of the public. The funds are being held in escrow following the settlement of DOE allegations that Conoco, Inc. violated federal price regulations in certain 1973 sales of motor gasoline and No. 2 heating oil.

DATE AND ADDRESS: Applications for Refund must be filed within 90 days from the date of publication of this Notice in the Federal Register. Comments regarding possible second-stage procedures must be filed within 30 days of publication of this Notice in the Federal Register. Both applications and comments should be addressed to Conoco Consent Order Refund Proceeding, Case No. DFF-0003, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered onto by the agency and Conoco, Inc. in settlement of alleged pricing violations in certain sales of motor gasoline and No. 2 heating oil during the period March 6, 1973 through November 30, 1973.

The Decision sets forth the procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Conoco pursuant to the consent order. The DOE hs decided that during the first stage of the refund process funds should be distributed to parties who purchased motor gasoline or No. 2 heating oil traceable to either M&A Petroleum Company or Foremost Petroleum Company (the first purchasers of all the product covered by the Conoco consent order) and who can show that they were injured by the alleged Conoco overcharges. In addition, a threshold for small claims has been established under which firms that purchased 50,000 gallons or less per month of motor gasoline or No. 2 heating oil from M&A or Foremost can qualify for refunds without further proof of injury. Applications for Refund should be submitted within 90 days of publication of this Notice in the Federal Register. All applications received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday (except Federal holidays) in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. Detailed instructions for the filing of refund applications are contained in Section III of the Decision.

The Decision also discusses possible second-stage refund procedures that might be initiated if any funds remain after payment of all meritorious claims and solicits comments from the public regarding the possible second-stage procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this Notice in the Federal Register, and should be sent to the address set forth at the beginning of this Notice. Comments received in this proceeding will be available for public inspection in the same location as the Applications for Refund.

Dated: January 23, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy—Special Refund Procedures

January 23, 1984.

Name of Petitioner: Office of Special Counsel: In the Matter of Conoco, Inc.

Date of Filing: April 20, 1979.

Case Number: DFF-0003.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration's Office of Special Counsel (OSC) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds to injured persons in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulator provisions, of the OSC filed a petition for the Implementation of Special Refund Procedures in connection with a consent order dated August 11, 1978, with the Continental Oil Company, now the Conoco subsidiary of E.I du Pont de Nemours and Company. *See* 43 FR 38925 (1978). Under the terms of the consent order Conoco agreed to establish a $2 million fund in settlement of DOE claims that it overcharged two firms in sales of motor gasoline and No. 2 heating oil. The funds have been paid to the DOE and are now being held in an escrow account under the jurisdiction of the agency pending receipt of instructions from the Office of Hearings and Appeals regarding their distribution.

The OHA accepted jurisdiction over the Conoco consent order funds in a decision issued on August 21, 1980. *See Office of Enforcement*, 6 DOE ¶ 82,572 (1980). We noted that implementation of a Subpart V refund process will discharge the obligations of the DOE under the Conoco consent order "to provide for a claims procedure to be followed by persons asserting a right to any portion of payment" and "to evaluate such claims and make refunds to those persons who are able to support such claims." Consent Order at 7. We concluded that the jurisdictional requirements of Subpart V had been satisfied in this case because the DOE was unable to readily identify persons who are eligible for refunds or to readily ascertain the amounts that such persons are eligible to receive. *Id. See also* 10 CFR 205.280. Our determination to exercise jurisdiction over the Conoco matter was based on the amount of money involved, the complexity of disbursing this sum, and the importance of providing notice so that persons who may have an interest in the funds have an opportunity to participate in the refund proceedings. *Office of Enforcement*, 6 DOE at 85,220.

On March 13, 1981, the OHA issued a Proposed Decision and Order which tentatively established special refund procedures to be used in adjudicating claims to the Conoco settlement fund. The Proposed Decision was published in the Federal Register. *See* 46 FR 17643 (March 19, 1981). Copies of the Proposed Decision were also sent to interested parties, and comments were solicited from the public. The comment period specified in the Federal Register has

passed, and on November 14, 1983, the OHA finally received certain essential sales and customer information of a type that it had long sought without success in connection with this proceeding. *See* n.1, *infra*. We are therefore ready to proceed with the distribution of the funds involved in this special refund proceeding.

The purpose of this Decision is to establish the mechanism by which firms that purchased motor gasoline or No. 2 heating oil in sales covered by the Conoco consent order may apply for refunds. We shall first review the Proposed Decision and discuss the comments that we received concerning the tentative first-stage refund procedures. Then we shall discuss in detail the refund procedures that we have decided to adopt. We shall not, however, establish second-stage refund procedures in this Decision. It is impossible to know whether the consent order funds may be thoroughly depleted by the first-stage refunds. In that event no second stage would be necessary. Further, our determination concerning the disposition of any residual funds will depend on the amount of money available after the first-stage claims procedure is completed. However, because all of the comments submitted in response to the Proposed Decision also addressed possible second-stage procedures, we will briefly discuss issues raised in those comments about the second stage.

I. Background

In the Proposed Decision, we described events surrounding the establishment of the Conoco consent order fund in detail. As we stated in the determination, the Conoco consent order resulted from an investigation initiated in March 1977 by the Federal Energy Administration (FEA) and later completed by the DOE. The investigation was undertaken after representatives of Conoco informed the FEA that in 1973 Conoco employees might have engaged in a scheme to sell motor gasoline and No. 2 heating oil at unlawful prices. The investigation generally confirmed the information that had been provided by Conoco and further revealed that Foremost Petroleum Company and M&A Petroleum Company, the first purchasers who resold the products involved, apparently had voluntarily participated in the arrangement. *See* 43 FR 38925 (August 31, 1978). After completing its investigation, the OSC referred the matter to the Department of Justice for investigation of possible criminal violations by Conoco Foremost, and M&A. The three firms, the DOE, and the Department of Justice subsequently agreed to the following disposition of the pending judicial proceedings: Conoco entered a plea of *nolo contendere* to a felony charge of making false records under 18 U.S.C. 1001 and a misdemeanor count of violating Cost of Living Council regulations. It paid $15,000 in criminal fines. M&A entered a plea of *nolo contendere* to one felony count of violating 18 U.S.C. 1001 and paid $10,000 in criminal fines. Foremost entered a plea of *nolo contendere* to one misdemeanor count of violating Cost of Living Council regulations and paid $5,000 in criminal fines.

Conoco, M&A, and Foremost also entered into separate consent orders with the DOE. In the Conoco consent order, the firm agreed to tender a certified check for $2,000,000 to the United States Government. This payment was deemed to satisfy any administrative remedial action that might be sought by the DOE for the refund of overcharges by Conoco in sales of gasoline and No. 2 heating oil to M&A and Foremost during the period March 6, 1973 through November 30, 1973. Additionally, Conoco agreed to pay $985,000 in civil penalties in complete settlement of all administrative remedial actions that might be undertaken by the DOE against Conoco with regard to the matters described in the consent order.

In the other two consent orders, also executed on August 11, 1978, M&A and Foremost agreed to pay $40,000 and $45,000, respectively, in civil penalties to settle all administrative remedial actions that might be undertaken in connection with the transactions with Conoco. M&A and Foremost further agreed to waive any claims for refunds which they might have against Conoco with respect to the transactions involved.

The DOE agreed in the Conoco consent order "to provide for a claims procedure to be followed by persons asserting a right to any portion of the [$2 million settlement fund]" established by Conoco and "to evaluate such claims and make refunds to those persons who are able to support such claims." Consent Order at 7. The Proposed Decision and Order tentatively established a two-stage special refund procedure for the Conoco consent order funds. We stated that in the first stage of that process the funds would be distributed to qualified claimants who purchased motor gasoline or No. 2 heating oil affected by the alleged Conoco overcharges, *i.e.*, to claimants who purchased motor gasoline or No. 2 heating oil from or traceable to Foremost or M&A. We observed that any injury attributable to the alleged Conoco overcharges would have been experienced by Foremost and M&A or by the chain of customers who purchased motor gasoline or heating oil from those two firms. Because Foremost and M&A had waived their claims to any portion of the fund, we limited our inquiry solely to the latter group of firms and individuals. (*1*)

In the Proposed Decision, we noted that Foremost and M&A contend that they did not pass through to their own purchasers any portion of the cost increases attributable to the alleged Conoco overcharges. This could not be verified, however, because on the basis of their relatively small size, neither Foremost nor M&A was subject to Cost of Living Council price restrictions in sales of refined products until June 13, 1973. On the basis of the available evidence, we concluded that the firms' contentions were not convincing. We reasoned that in the uncontrolled market environment which existed for such smaller firms during the beginning of the relevant period, the prices charged by Foremost and M&A in all likelihood were affected by their marginal costs. We concluded accordingly that absent strong evidence to the contrary, M&A and Foremost can be treated for the purpose of the Conoco refund proceeding as having passed through their increased costs to their purchasers, and we proposed to focus our first-stage refund efforts on those purchasers and their downstream customers. Despite numerous opportunities, M&A and Foremost have submitted no evidence regarding their costs or prices. (*2*)

Finally, we noted that Conoco had agreed to cooperate with the DOE in the evaluation of claims and stated that Foremost and M&A would be requested to supply lists of their motor gasoline and heating oil customers during the relevant period so that they could be individually notified of this proceeding. (*3*)

In separate section of the Proposed Decision, we considered ways of distributing any funds remaining after appropriate refunds to claimants had been made. We proposed that this second stage be effected by using rate-regulated electric utilities to pass through the remaining funds to consumers who may have been overcharged through fuel adjustment clauses or other appropriate mechanisms. We further suggested that state governments in the affected areas also might be designated as second-stage refund recipients.

II. Comments on the Proposed First Stage

In response to our request for comments on the proposed first stage, we received comments from six parties including Conoco, the General Accounting Office (GAO), two state governmental entities, and two trade associations. Each of the commenters generally supported our proposals regarding the first-stage of the special refund proceeding to distribute the Conoco consent order funds. The only objection expressed regarding any aspect of the proposed first-stage was raised by the National Oil Jobbers Council (NOJC). The NOJC contends that requiring resellers to demonstrate that market conditions prevented them from passing through any additional costs associated with the alleged overcharges would impose an "unfair burden on the small businessman." NOJC Comments at 1. The NOJC asserts that the DOE has access to the relevant information and therefore "is in a better position than the jobber to assess the market conditions prevalent at the time of the overcharge." *Id.*

Contrary to NOJC's belief, the DOE does not possess data showing how often the average reseller was constrained from raising its prices by either market forces or its maximum lawful selling price (during applicable periods). In prior refund proceedings we have attempted without success to locate that type of data. *See Office of Special Counsel (Amoco),* 10 DOE ¶ 85,048 at 88,206. Moreover, it appears that the concerns set forth in the NOJC comments are based upon a misconception about the type of showing envisioned for refund applicants in the Proposed Decision and the Subpart V regulations. Our experience to date with more than 12,000 refund applications demonstrates that the problems which small resellers have in filing claims can be overcome by the use of presumptions. *See, e.g., id.* at 88,210–12. As discussed below, we will also establish a presumption of limited injury for smaller claimants in this case which will enable them to receive refunds without having to make a further showing that they were unable to pass through any costs associated with the alleged overcharges.

III. Application for Refund Procedures

After having considered all the comments received concerning the first-stage procedures tentatively adopted in our Proposed Decision, we have concluded that Applications for Refund should now be accepted from parties who purchased motor gasoline or No. 2 heating oil traceable to the M&A or Foremost sales affected by the alleged Conoco overcharges. We shall now discuss the specific requirements for Applications for Refund that we have decided to adopt for this proceeding.

In the Proposed Decision concerning the Conoco consent order funds we tentatively concluded that a claimant who is a refiner, reseller or retailer should demonstrate that at the time it purchased covered products from supplier(s) in the M&A and Foremost distribution chain, market conditions would not permit it to pass through the additional costs associated with the alleged overcharges. This proposed requirement that refiners, resellers, and retailers provide evidence that they did not pass on the alleged overcharges will be adopted.

To the extent that a refiner, reseller or retailer can establish that it absorbed the alleged overcharges rather than passed them on to its customers, it will be eligible to receive a portion of the consent order funds. In order to qualify for a refund, these claimants will be required to demonstrate that market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. (*4*) In addition, a reseller of petroleum products must show that it maintained a "bank" of unrecovered costs from the first date for which it claims a refund after it became subject to price controls in order to demonstrate that it did not subsequently recover these costs by increasing its prices. (*5*)

With respect to claimants who are end-users and ultimate consumers, the above showing is not necessary in order for a firm to qualify for a refund. *See, e.g., Standard Oil Co. (Indiana)/The Hertz Corp.,* 11 DOE ¶ 85,202 (1983). Examples of the types of organizations and individuals in this group include schools, federal, state, and local government entities, research foundations, home owners, and religious institutions. In order to establish a claim, this type of applicant need demonstrate only that it purchased a specific quantity of motor gasoline or No. 2 heating oil which was sold by M&A or Foremost during the consent order period. Additionally regulated utilities and agricultural cooperatives which are required to pass on to their customers the benefit of any refund received will be exempted from the requirement that they demonstrate injury.

As in a number of previous refund cases, we have concluded that there is a class of potential claimants who may be presumed to have suffered no injury from any increased prices charged by M&A or Foremost as a result of the alleged Conoco overcharges. Those parties are firms who made spot purchases of motor gasoline or No. 2 heating oil from M&A or Foremost. As we stated in *Office of Enforcement (Vickers),* 8 DOE ¶ 82,597 (1981), these customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase to their own customers. *Id.* at 85,396–97. We believe that the same rationale applies in this case. Consequently, we will presume that firms who made only spot purchases from M&A or Foremost were not injured by the alleged overcharges. However, this presumption is rebuttable, and a spot purchaser who can demonstrate injury will be eligible to receive a refund.

As we noted above, we have concluded that a threshold level of purchases below which a claimant need not demonstrate injury should be established for this refund proceeding. In a number of special refund proceeding cases decided since the Conoco proposed decision was issued we have adopted threshold levels. *See, e.g., Office of Enforcement (Richardson),* 10 DOE ¶ 85,056 at 88,278–79 (1983) and cases cited therein. Our decision to adopt a threshold level below which applicants do not have to submit any further evidence of injury is based upon several factors. An important consideration is that establishing a threshold permits the OHA to conduct special refund proceedings with much greater efficiency and reduced administrative costs. It is also authorized by the Subpart V regulations. *See* 10 CFR 205.282(e).

As we discussed earlier, we also recognize that requiring small firms to produce records of transactions that occurred approximately ten years ago could prove to be an onerous, if not impossible, task. Although all regulated firms are still required to maintain these records, *see* 10 CFR 210.1, large firms are more likely to have readily available records of long-past transactions because of preexisting provisions requiring larger firms to maintain such information. *Vickers,* 8 DOE at 85,396. Nevertheless, even if the records still exist, the cost of compiling information that is sufficient to show injury would,

in many cases, exceed the refund to be gained. Subpart V offers a means of compensating many individuals who, because they either lack the resources or do not have a sufficient financial stake in the outcome to institute private lawsuits under Section 210 of the Economic Stabilization Act of 1970 (ESA), have suffered injuries which would otherwise go unredressed. Since refunding money to benefit adversely affected parties is the primary concern of Subpart V, *Amoco*, 10 DOE at 88,199, we are anxious to avoid requirements that unnecessarily discourage smaller applicants from seeking refunds.

The threshold figure selected for a refund case should strike an appropriate balance between the competing considerations regarding a claimant's expense of preparing an application and the DOE's responsibility to require certain documentation before disbursing large sums of money to applicants who claim to have sustained injury. *Richardson*, 10 DOE at 88,278; *Office of Special Counsel (Charter)*, 10 DOE ¶ 85,039 at 88,167 (1982). In order to establish a threshold which best achieves the desired balance, a number of factors should be taken into consideration. *See Richardson*, 10 DOE at 88,278–79; *Charter*, 10 DOE at 88,167.

According to information that the OHA obtained from Conoco, Foremost and M&A purchased a total of 48,180,296 gallons of motor gasoline and No. 2 fuel oil that was covered by the consent order. Based on this information, the per-gallon refund for the customers claiming refunds under the Conoco consent order will be $.0415. In applying the equitable considerations discussed above to the instant case, we find first that while the Conoco consent order spans a relatively short period of only nine months, that period ended over ten years ago and began before federal price controls were applicable to smaller petroleum firms. Furthermore, since M&A and Foremost were the initial resellers in a distribution chain for the substantial amount of motor gasoline and No. 2 heating oil involved in this case, we anticipate that we will receive Applications for Refund from a large number of downstream customers. Documenting overcharge injury for this brief and long-concluded period could well be an expensive and time-consuming process.

In a number of previous Subpart V cases we have established a purchase threshold of 50,000 gallons per month below which applicants are not required to demonstrate overcharge injury. *See, e.g., Office of Special Counsel (Pennzoil)*, 9 DOE ¶ 82,545 at 85,245; *Vickers*, 8 DOE at 85,396. Based on our application of the relevant equitable considerations to the circumstances of this case, we think that such a threshold is appropriate for larger firms that were subject to federal petroleum price controls throughout the entire consent order period. Such larger firms will therefore be eligible for a refund without further proof of injury for the first 50,000 gallons of motor gasoline and the first 50,000 gallons on No. 2 heating oil that they purchased from M&A or Foremost during any month of the Conoco consent order period. As a result, larger firms qualifying for the full threshold refund for the entire 8.75 month Conoco consent order period would receive a refund of $18,156.25 (plus interest). *Compare Richardson*, 10 DOE at 88,279–80 (varying threshold refund amounts from $21,346.50 to $26,044.74); *Charter*, 10 DOE at 88,167 (threshold refund of $21,000).

With regard to smaller firms that were not subject to price controls until June 15, 1973, we believe that a different approach is appropriate. These smaller firms were not required to maintain records documenting their costs and sales prices prior to June 15, 1973. In view of these special circumstances, it will be more difficult for those firms to demonstrate injury and they should be eligible for the per-gallon refund amount for the entire amount of gasoline or No. 2 heating oil that they purchased from or traceable to M&A or Foremost prior to June 15, 1973. From June 15, 1973 through the remainder of the Conoco consent order period, all firms will be subject to the same threshold level of 50,000 gallons per month for each covered product.

Application for Refund of a portion of the Conoco consent order funds will be accepted if filed within 90 days after the publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.283. We will consider all applications, although we may later impose a lower dollar limit on claims. *See* 10 CFR 205.286(b). *(6).* Applications made on behalf of a class of claimants will be considered on a case-by-case basis. An application must be in writing, signed by the applicant, and specify the special refund proceeding that the application pertains to by firm name and case number. If the applicant is not a direct purchaser from M&A or Foremost it should submit evidence indicating from whom it purchased the motor gasoline or No. 2 heating oil for which it is claiming a refund and its basis for believing that the product that it purchased was sold by one of the two firms during the consent order period.

Applications for Refund must be filed in duplicate on 8½ x 11 inch paper. Copies of all applications will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why it believes the information is privileged or confidential. Applications should be sent to: Conoco Consent Order Refund Proceeding, Case No. DFF–0003, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 . All Applications for Refund received within 90 days of the date of publication of this Decision in the **Federal Register** will be processed pursuant to 10 CFR 205.284.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following section discusses the showing that should be made by refiners, resellers, retailers and end-users of the products covered by this special refund proceeding:

A. Each applicant should furnish its name, street or post offfice address, and its telephone number. If the applicant is a business firm, the applicant should furnish any and all other names under which it operated during the period for which the claim is being filed.

B. The application for refund should contain the name and telephone number of the person who prepared the application. If the preparer was someone other than the applicant, the claimant may wish to furnish the name and telephone number of a "contact person" who is familiar with the facts set forth in the application. Unless otherwise specified, the refund check will be issued to the preparer.

C. Each application should set forth the name, address and telephone number of the supplier who sold the applicant the volumes of product for which a claim is being filed. If the supplier was a reseller other than M&A or Foremost, the applicant should state whether the reseller was supplied directly by one of those two firms. If the product was not branded, the applicant should explain the reasons why it believes that the purchased product came from M&A or Foremost during the relevant period.

D. Each applicant should report its volume of purchases of relevant product by month for the period of time for which it is claiming it was injured by the alleged overcharges. No invoices need be submitted with the application; however, the applicant should keep its supporting material in a convenient place at least until it has received a refund. We may request copies of invoices or other more detailed supporting material in certain cases.

E. Each applicant should specify how it used the product for which it is claiming a refund, *e.g.*, as a refiner, reseller, retailer, or ultimate consumer.

F. Each applicant (other than an ultimate consumer) should state the date it became subject to federal petroleum price controls.

G. An applicant who is a refiner or a reseller must state whether any of the product for which it is claiming a refund was exported from the United States.

H. If the applicant is a refiner, reseller (other than a regulated utility or agricultural cooperative), or retailer it should state whether it maintained banks of unrecouped product cost increases from the date it became subject to price controls through January 27, 1981. *See* n.5. It should also furnish cumulative monthly bank calculations for the entire period.

I. If the applicant is a refiner, reseller (other than an agricultural cooperative), or retailer, it must submit evidence to establish that it did not pass on the overcharges to its customers if its application requests a refund based on purchases averaging over the threshold amount.

J. Each application shall indicate whether the applicant or any person acting on his instructions has filed or intends to file any other application or claim of whatever nature regarding the underlying transactions between Conoco and M&A or Foremost.

K. The applicant should report whether it is or has been involved as a party in other DOE enforcement proceedings or private section 210 actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

L. The application *must* contain a signed statement that the applicant swears (or affirms) that all of the information furnished in the application is true and accurate to the applicant's best knowledge, and that the signer understands that anyone who provides false information to the federal government may be subject to a jail sentence, a fine or both. *See* 18 U.S.C. 1001.

IV. Distribution of the Remainder of the Consent Order Funds

As we noted earlier, the commenters primarily addressed our proposed distribution of the remainder, if any, or the consent order funds after all meritorious claims have been paid. Those comments can be divided into three groups. First, some commenters contend that the office of Hearings and Appeals lacks the statutory or regulatory authority to implement the proposed distribution. Second, some commenters acknowledge, that the Office possess the authority to fashion such a restitutionary mechanism, but suggest alternatives to or modifications of our original proposal. A third group of comments were received from state government entities that support our alternative proposal to distribute funds through states or public utilities according to the pro rata share of gasoline or No. 2 heating oil purchased in their states during the consent order period.

Conoco is among the commenters who contend that the OHA lacks the authority to distribute any portion of the consent order funds to any parties other than individual claimants who purchased covered products directly from M&A or Foremost. The firm asserts that under the terms of the consent order, only such disbursements are allowed and then any remaining funds must be paid into the U.S. Teasury. In taking this position, Conoco expresses concern that it could be subject to double liability if we were to distribute any residual funds as proposed rather than paying any remaining moneys to the U.S. Treasury. We find no merit in Conoco's position.

We have discussed and rejected the assertion that this Office lacks the authority to distribute consent order funds to parties other than direct purchasers in a number of prior decisions. *See, e.g., Vickers,* 8 DOE at 85,398–99. Nor do we find merit in Conoco's concern that our proposal for a second-stage distribution might subject the firm to double liability that it might not otherwise face. The period covered by the Conoco consent order involved in this proceeding ended over ten years ago. Most state limitation periods governing private overcharge actions would have run during a period of this length. Further, it is not suggested that Conoco itself might have overcharged any of its customers other than M&A and Foremost, who have themselves pled *nolo contendere* to changes of voluntary participation in the underlying scheme. We cannot perceive how any second-stage distribution scheme might cause Conoco to be subject to double liability for any related overcharges. Moreover, while placement of any funds remaining after the first-stage claims procedure in the U.S. Treasury remains an option, we cannot perceive how it could better protest the firm from any possible double liability in connection with the alleged overcharges. In this Decision, we are not implementing second-stage refund procedures. Such a step would be difficult to take before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the consent order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme. Moreover, in the present case, claimants could assert claims which, if meritorious, would completely exhaust the consent order funds. In order for members of the public to be made aware of outstanding issues and be able to comment on them, we note that we summarized and briefly addressed similar comments received concerning the proposed second-stage refund procedures in *Vickers,* 8 DOE at 85,398–99. We will not reiterate our discussion of these issues here. We continue to seek additional comments on possible second-stage distribution procedures. In considering possible comments that might be submitted, we suggest that parties also review our discussions of possible second-stage proposals set forth in more recent decisions such as *Amoco,* 10 DOE at 88,201–02. Comments on this subject in the present case should be submitted to the Conoco Consent Order Refund Proceeding at the address listed above within 30 days of publication of this Decision and Order in the **Federal Register.**

It is Therefore Ordered That:

Applications for Refund from the funds provided by the Continental Oil Company shall be filed and processed in the manner set forth in the foregoing Decision.

Dated: January 23, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

1. On March 18, 1981 the Office of Hearings and Appeals served a copy of our Proposed Decision upon Thomas R. McDade, Esq., of the law firm of Fulbright & Jaworski, counsel

for Foremost and M&A. Although we invited comments on the proposed determination, the two firms failed to respond. On April 23, 1981, this Office mailed a second copy of our Proposed Decision to McDade. In our transmittal letter we stated our belief that Foremost and M&A could greatly assist the DOE's effort to fashion the most appropriate refund procedures. Our letter included the following language:

Before we implement the special refund procedures, we wish to obtain any information available from Foremost and M&A concerning the names and locations of their gasoline and heating oil customers during the period March 6, 1973 through November 30, 1973. This will allow us to refine our estimates of the area likely to have been affected by the alleged Conoco overcharges.

Again, Foremost and M&A failed to respond. In an August 28, 1981 telephone conversation with an Office of Hearings and Appeals staff attorney, McDade acknowledged receipt of our April 23 letter but stated that he did not intend to respond.

Because we felt that important information was needed regarding M&A and Foremost's sales during the Conoco consent order period, this Office issued a Special Report Order to each firm on October 22, 1981. *See* 10 CFR 205.8. The Foremost SRO requested the following information from the firms:

(1) Please state the total volume (in gallons) of Foremost's sales of motor gasoline during the relevant period of [March 6, 1973 through November 30, 1973]. Please state the total volume (in gallons) of Foremost's sales of No. 2 heating oil during the relevant period.

(2) Please submit information indicating, for each state and the District of Columbia, the total volume of motor gasoline delivered by Foremost to customers within that state or District during the relevant period. Please submit information indicating, for each state and the District of Columbia, the total volume of No. 2 heating oil delivered by Foremost to customers within that state or District during the relevant period.

(3) Please identify all states (including, if appropriate, the District of Columbia) in which Foremost has reason to believe that its motor gasoline was sold or resold during the relevant period. Please identify all states (including, if appropriate, the District of Columbia, in which Foremost has reason to believe that its No. 2 heating oil was sold or resold during the relevant period.

(4) Please submit the names and addresses of all direct purchasers of Foremost motor gasoline during the relevant period and indicate the gallonage purchased by each. Please submit the names and addressses of all direct purchasers of Foremost No. 2 heating oil during the relevant period and indicate the gallonage purchased by each.

Foremost SRO at 6. The SRO issued to M&A requested identical information regarding its sales and customers.

The firms filed a request for withdrawal of the SROs with the Office of Hearing and Appeals on November 9, 1981. That request was denied on January 19, 1982. *See* Foremost Petroleum Co., 9 DOE ¶ 82,526 (1982). Despite the denial, the firms failed to provide the requested information. On August 19, 1982, the DOE filed petitions to enforce the SROs in the United States District Court for the District of Columbia. M&A and Foremost responded by filing (1) a motion to dismiss for improper venue or alternatively, to transfer the matter, and (2) a counterclaim seeking to retract their own consent order waivers to the Conoco fund and claim the $2,000,000 themselves.

The court denied respondents' motion on December 9, 1982. *See* United States v. M&A Petroleum Co., Fed. Energy Guidelines ¶26,450 at 29,345 (D.D.C, consolidated decision issued December 9, 1982). The firms continued to contest the requirement that they respond to the SRO. However, on October 6, 1983, the Court granted summary judgment to the DOE and simultaneously dismissed the firms' counterclaims. Consequently, M&A and Foremost were ordered to provide the OHA with the requested information within 20 days of the date of its order. United States v. M&A Petroleum Co., Fed. Energy Guidelines ¶ 26,450 at 29,344. (October 6, 1983).

After the firms obtained an extension of time from the court in which to respond, the OHA finally received a response to the SRO, over two years after the DOE first requested the information. It consisted of a two-page letter from R. B. Grammer, who states that he was "associated with both Foremost and M&A during the period" in question, and a cover letter from McDade. Mr. Grammer stated that records for this period are no longer available but provided a list of 10 M&A and Foremost customers "that I am able to remember for the period." The only other information he provided is that

[t]he volume of products that was delivered to these customers to the best of my knowledge during this period was approximately sixty million gallons. This product was delivered out of the Lake Charles, Louisiana facilities of Continental Oil Company into the Colonial Pipeline and I have reason to believe that some of this volume was delivered to some of the same customers in the states of Alabama, Georgia, Mississippi and Tennessee.

In his letter forwarding the Grammer letter to the OHA, McDade states that "the information submitted represents the best evidence presently available to Foremost and M&A concerning the information sought by the Special Report Orders of Octoer 22, 1981." Letter of Thomas R. McDade, Esq., to the Office of Hearings and Appeals, dated November 10, 1983. This is not the proper place to comment upon the conduct of counsel in failing to cooperate with the DOE's request for essential information in this proceeding. It must be noted, however, that the passage of time caused by this refusal has inevitably served to dim Mr. Grammer's obviously foggy recollection. This and the delay itself have certainly been adverse to the interests of persons with a legitimate claim to the consent order funds involved here, many of which are small, struggling enterprises.

2. Throughout the SRO proceeding, *see* n.1, above, M&A and Foremost have simply maintained that their records regarding purchases and sales during the Conoco consent order period are no longer available. Neither firm has attempted to provide any other type of evidence indicating that it absorbed the costs associated with the alleged Conoco overcharges. As indicated below, our analysis in the absence of such a showing is consistent with our proposed treatment of resellers of Foremost and M&A products: the Proposed Decision tentatively placed the burden on all resellers to demonstrate that they did not pass on cost increases as a condition to receiving a share of any refund distribution. This requirement is adopted in Section IV of this Decision and Order.

3. We noted in the Proposed Decision that according to information provided by Conoco, the distribution chain for the motor gasoline and heating oil marketed by Foremost and M&A appeared to cover broad regions of the United States ranging from Texas through the New York City metropolitan area. Preliminary information which we received from Conoco reveals that Foremost and M&A conducted most of their reselling operations during 1973 in Texas and the Southeast. Conoco indicated that motor gasoline and heating oil it sold to Foremost and M&A during 1973 could be traced to Conoco's Lake Charles refinery in Lousisiana. The products were then transported through the Colonial Pipeline which, with its branches, distributes refined products in a fourteen state area (Texas, Louisiana, Mississippi, Alabama, Georiga, Tennessee, South Carilina, North Carolina, Virginia, Maryland, Pennsylvania, Delaware, New Jersey and New York) and the District of Columbia. We tentatively decided to treat this region as the area likely to have been affected by the alleged overcharges, although we noted that data supplied by Foremost and M&A and persons commenting on the Proposed Decision, might lead us to modify this determination. The information we received as a result of the SROs and notices from intended claimants in fact seem to indicate that the product in question was marketed primarily in Texas and the Southeast. *See also*, n.1, above. However, in light of the factual uncertainties which exist in this case, any firm regardless of its location, which can trace a purchase to the products covered by the Conoco consent order, may file a refund application.

4. In prior special refund proceedings we have declined to set forth a precise methodology that claimants must use to show that they were injured as a result of allegedly unlawful pricing practices. Instead, we have provided potential applicant with an understanding of the showing of injury that we look for, stating that each firm can best decide how to substantiate its claim of injury based on its factual circumstances and its recordkeeping systems. While we still believe that a flexible approach is best, we have considered showings made by various types of claimants in a number of refund decisions and suggest that potential claimants review these decisions for guidance in preparing their applications. *See e.g.*, Tenneco Oil Co./Enterprise Products Co., 10 DOE ¶ 85,107 (1982); Tenneco Oil Co./Chevron U.S.A. Inc., 10 DOE ¶ 85,104 (1982); Tenneco Oil Co./

Farmland Industries, Inc., 9 DOE ¶ 82,597 (1982).

5. We note that a firm which recouped increased product cost banked during the consent order period only after the consent order period nonetheless recovered the increased costs and thus suffered no injury as a result of the alleged overcharges. Consequently, claimants that are required to demonstrate that they did not pass through increased costs must show that they had banks until January 28, 1981, the date on which the President decontrolled all remaining covered products. It is also worth noting, however, that in previous refund application cases, the OHA has granted claims from applicants who have elected to limit their claim to the threshold amount in spite of the absence of banks. *See, e.g.*, Tenneco Oil Co./Save-a-Ton, 9 DOE ¶ 82,600 (1982); Tenneco Oil Co./Thomas Fastiggi, 9 DOE ¶ 82,582 (1982).

6. In a number of prior Subpart V refund cases we have established a $15 minimum refund due to the administrative cost involved in analyzing applications and issuing refund checks.

[FR Doc. 84-4572 Filed 2-21-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of December 19 Through December 23, 1983

During the week of December 19 through December, 1983, the decisions and order summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

February 13, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeal

Charles Barnes, 12/23/83, HFA-0146

Charles Barnes filed an Appeal from a denial by the Director of the Division of Freedom of Information and Privacy Acts Activities of a request for a waiver of search and copying fees to be incurred in responding to a Request for Information which Barnes had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that Barnes had no definite plans for analyzing and disseminating to the public the information sought in his FOIA Request and that, consequently, no basis existed for concluding that granting Barnes' request for a fee waiver would primarily benefit the public. Accordingly, Barnes' Appeal was denied. The DOE further found, however, that the fee estimate that Barnes received with regard to his Request for Information was excessively broad and hindered the disclosure objectives of the FOIA. The DOE observed that if Barnes again sought the information described in his FOIA Request, a more careful estimation of fees, broken down by specific documents or types of documents where feasible, should be provided to him.

Request for Modification and or Rescission

Gulf Oil Corporation, 12/23/83, HER-0058

On May 25, 1983, Gulf Oil Corporation filed an Application for Modification of a Decision and Order that the DOE issued to Husky Oil Company on May 18, 1983. In the May 18 Decision, the DOE granted Husky exception relief from a portion of the entitlement purchase obligations that the firm incurred under the provisions of 10 CFR 211.67, but excluded from Husky's cost of sales premiums above the lawful price of the price controlled crude oil that the firm acquired during 1979 and 1980.

In its Application, Gulf contended that in calculating Husky's premium payments, the DOE erroneously allocated those payments between exempt crude oil and price controlled crude oil that Husky purchased, and disallowed the portion of premiums allocated to price controlled crude oil.

In this Decision and Order, the DOE reviewed the entire record and concluded that the premiums that Husky paid were for the purpose of acquiring price controlled crude oil, and that there was no economic reason for Husky to pay a premium for exempt crude oil which Husky purchased at market prices. The DOE therefore granted the Gulf Application and made appropriate adjustments to disallow the entire amount of the premium payments.

Motions for Discovery

Mobil Oil Corporation, 12/22/83, HRD-0029

Mobil Oil Corporation (Mobil) filed a Motion to Dismiss in which it requested the Office of Hearings and Appeals to dismiss the Proposed Order of Disallowance (POD) issued to the firm by the Econimic Regulatory Administration (ERA). In the alternative, Mobil requested the OHA to compel ERA to provide further discovery, namely to: (i) Supplement its responses to certain interrogatories, (ii) release seven documents withheld pursuant to the deliberative process privilege, and (iii) conduct an additional search for responsive documents. In considering the motions the OHA determined that it was not necessary to dismiss the proceeding to eliminate any prejudice to Mobil resulting from ERA's alleged failure to comply with its discovery obligations. Consequently, the Motion to Dismiss the POD was denied. The OHA also concluded, however, that several of ERA's interrogatory responses were inadequate. Accordingly, the OHA directed ERA to supplement its responses to the subject interrogatories. In all other respects, the Motion to Compel Discovery was denied.

San Joaquin Oil Company and San Joaquin Refining Co., Inc., Economic Regulatory Administration/San Joaquin Oil Company and San Joaquin Refining Co., Inc., 12/20/83, HRD-0076, HRZ-0166

San Joaquin Oil Company and San Joaquin Refining Co., Inc. (San Joaquin) filed a Motion for Discovery in connection with a Statement of Objections to a Proposed Remedial Order issued to the firm by the Economic Regulatory Administration. In the PRO, the ERA alleged that San Joaquin had violated the DOE regulatory program by incorrectly calculating increased product cost and thus charging prices for petroleum products which exceeded those permitted by the regulations. Much of the alleged overcharge amount was due to San Joaquin's treatment of the proceeds received from the sale of its fee-free import licenses. In its Motion for Discovery, San Joaquin sought extensive contemporaneous construction discovery related to the issue of the treatment of fee-free license proceeds. It also sought discovery related to the equal application rule and to regulations governing sales to new markets. The DOE determined that the request for discovery should be denied because it would not yield information which would be useful in the context of the enforcement proceeding. Accordingly, the San Joaquin Motion was denied. In addition, in the same decision, a Motion for Admission filed by the ERA was dismissed without prejudice because it served no helpful purpose at this point in the proceeding.

Interlocutory Order

Economic Regulatory Administration/ Transco Trading Company, 12/19/83, HRZ-0176

The Economic Regulatory Administration (ERA) filed a Motion to Join Billy Ray Jones in a proceeding involving a Proposed Remedial Order issued to Transco Trading Company (Transco) and Refiners and Producers Marketing, Inc. (RPM). In support of its Motion, the ERA contended that Mr. Jones, as Transco's president and sole authorized agent, was responsible for the crude oil transactions which are the subject of the PRO proceeding. The ERA also contended that, as RPM's sole stockholder, Mr. Jones might be personally liable for any regulatory violations which the firm may have committed. In considering the Motion to Join, the DOE determined tht Mr. Jones' role in the transactions which form the basis for the violations alleged in the PRO was such that his participation would aid in the resolution of the PRO proceeding. Accordingly, the Motion to Join was granted.

Refund Applications

ADA Resources/Metropolitan Transit Authority, 12/19/83, RQ24-31

The Metropolitan Transit Authority of Harris County, Texas (Metro) filed a plan on how it proposed to use its share of the Ada Resources settlement fund. Metro's submission related to a Decision and Order issued on October 19, 1983, which established second-stage procedures for the disbursement

of funds which Ada Resources, Inc. had placed in an escrow account to settle its alleged violations of the DOE price regulations. *Office of Enforcement*, 11 DOE ¶ 85,161 (1983). Metro proposed to use its share of the Ada settlement funds, $17,631 plus interest, to subsidize its farebox revenues to provide and expand Metro's mass transit services in Harris, Fort Bend, Montgomery and Waller counties during its 1984 fiscal year. After reviewing Metro's proposal, the Office of Hearings and Appeals found that Metro's plan would benefit the citizens of those counties, consumers who were ultimately affected by the alleged Ada overcharges. Accordingly, Metro's plan was approved.

Ozona Gas Processing Plant I/States of California, Michigan, Illinois, and Indiana, 12/19/83, RF27–5, RF27–6, RF27–7, RF27–8

The States of California, Michigan, Illinois, and Indiana filed an Application for Refund for portions of the Ozona I consent order fund on behalf of a class of ultimate consumers consisting of the citizens of these states. The States' submissions related to a Decision and Order which established procedures for the disbursement of funds which Ozona Gas Processing Plant had placed in a DOE escrow account in settlement of its alleged violations of the DOE price regulations in its sale of natural gas liquids (NGLs). The States asserted that because NGLs may have been used in the production of motor gasoline, and because citizens of the four States purchased gasoline, they were entitled to shares of the Ozona I consent order fund. After analyzing the States' claim, the Office of Hearings and Appeals found that this type of claim should not be granted in the first stage of a special refund proceeding. However, OHA stated that it would reconsider the States' request for refunds during the second stage of the Ozona I proceding, if it is determined that distributing refunds to states where end users were injured by the alleged overcharges is an appropriate mechanism for achieving restitution, and if there is any evidence that Ozona NGLs were sold in California, Michigan, Illinois or Indiana.

Ozone Gas Processing Plant II/States of California, Michigan, Illinois, and Indiana, 12/23/83, RF28–4, RF28–5, RF28–6, RF28–7

The States of California, Michigan, Illinois, and Indiana filed an Application for Refund for portions of the Ozona II consent order fund on behalf of a class of ultimate consumers consisting of the citizens of these states. The States' submission related to a Decision and Order which established procedures for the disbursement of funds which the Ozona Gas Processing Plant had placed in a DOE escrow account in settlement of its alleged violations of the DOE price regulations in its sale of natural gas liquids (NGLs). The States asserted that because NGLs may have been used in the production of motor gasoline, and because citizens of the four States purchased gasoline, they were entitled to shares of the Ozona II consent order fund. After analyzing the States' claim, the Office of Hearings and Appeals found that this type of claim should not be granted in the first stage of a special refund proceeding. However, OHA stated that it would reconsider the States' request for refunds during the second stage of the Ozona II proceeding, if it is determined that distributing refunds to states where end users were injured by the alleged overcharges is an appropriate mechanism for achieving restitution, and if there is any evidence that Ozona NGLs were sold in California, Michigan, Illinois or Indiana.

Palo Pinto Oil and Gas/State of Virginia, State of North Carolina, State of New Jersey, 12/21/83, RQ5–24, RQ5–26, RQ5–27

The Office of Hearings and Appeals issued a Decision and Order granting second stage refunds to the States of Virginia, North Carolina, and New Jersey in connection with the Palo Pinto consent order fund. *See Palo Pinto Oil and Gas*, 11 DOE ¶ 85,034 (1983). Under the plans submitted by the States and approved by OHA, Virginia will use its share of the refund moneys to promote its motor oil recycling program, North Carolina will use its refund to purchase equipment to test heating efficiency in fifteen institutional facilities throughout the state, and New Jersey will devote its portion of the refund moneys to aid public and nonprofit institutions throughout the state reduce energy consumption through a three-stage process.

Standard Oil Company (Indiana)/Alfred Robinson, D.C. Cooper Grocery & Furniture, Zeccini's Service, Larry's Amoco, 12/19/83, RF21–9875, RF21–9902, RF21–9964, RF21–12244

The DOE issued a Decision and Order concerning four Applications for Refund filed by retailers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the four applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $2,116.

Standard Oil Company (Indiana)/Doug Asher Oil Co., Inc., 12/19/83, RF21–12243

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of Amoco middle distillates. The applicant elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the application, the DOE concluded that Doug Asher Oil Co. should receive a refund based upon the total volume of its Amoco middle distillate purchases. The refund granted in this proceeding totals $45.

Standard Oil Company (Indiana)/Doug Asher Oil Company, Inc., Feather Petroleum, Inc., 12/19/83, RF 21–10010, RF21–12213

The DOE issued a Decision and Order concerning two Applications for Refund filed by wholesalers of Amoco motor gasoline. These firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $3,523.

Standard Oil Company (Indiana)/Johnson & Dix Fuel Corp., 12/19/83, RF 21–12234

This proceeding was initiated by a letter dated August 23, 1983, from Bassman & Mitchell, Chartered, the attorneys representing Johnson & Dix Fuel Corp. (Johnson) in the *Amoco* special refund proceeding. In this letter, Bassman & Mitchell informed the Office of Hearings and Appeals that it had inadvertently submitted duplicate Applications for Refund on behalf of Johnson. Johnson's original application, based on purchases of 5,133,090 gallons of Amoco middle distillates, was granted on August 4, 1983. A revised application, claiming a refund for purchases of 5,255,491 gallons of Amoco middle distillates, was granted on September 21, 1983. In order to rectify this double payment, Bassman & Mitchell has remitted the $1,850 refund granted to Johnson on August 4, 1983. In the present Decision and Order, the OHA directed that the remitted money be credited to the Amoco escrow account at the Department of the Treasury and that the August 4 Decision be revised accordingly.

Standard Oil Company (Indiana)/Lasalle Oil Company, Mokena Quik Serv, 12/19/83, RF 21–11535, RF21–11895

This Decision and Order addresses two Applications for Refund, one filed by Lasalle Oil Company (Lasalle), the other by Mokena Quik Serv (Mokena). Both applicants requested a supplementary refund, in addition to the refunds they received for purchases of motor gasoline at the wholesale level, for that portion of their motor gasoline purchases which was sold to consumers through retail outlets. Each elected to apply for a refund based upon the presumption of injury and the formulae set forth in the *Amoco* decision. 48 F.R. 144 at 162–63 (1983). In considering these applications, the DOE concluded that each of the applicants should receive a refund based on the total number of gallons of motor gasoline sold at the retail level. The refunds granted to Lasalle and Mokena in this Decision and Order amount to $4,067 and $47, respectively.

Dismissals

The following submissions were dismissed.

Name	Case No.
Bi-Petro, Inc.	HRO–0183 HRD–0183
William T. Hailey	HEE–0082
Southern Crude Oil Resources, Inc	HRO–0176
State of Montana	RQ5–10

[FR Doc. 84–4573 Filed 2–21–84; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AH-FRL-2529-5]

Confidentiality Agreements; Policy Memorandum; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of Policy Memorandum Regarding Confidentiality Agreements under section 114 of the Clean Air Act; Correction.

SUMMARY: When the notice of policy was published on January 24, 1984 (49 FR 2942 and 2943), the memorandum from the Assistant Administrators for Air and Radiation to Office Directors and the ten EPA Regional Administrator was inadvertently omitted. Also the date of the memorandum was stated as December 16, 1983, when in fact, the correct date is December 15, 1983. The purpose of this action is to correct that omission and the date of the memorandum, which is reproduced below.

EFFECTIVE DATE: December 15, 1983 (date of policy memorandum).

FOR FURTHER INFORMATION CONTACT: Donald F. Walters, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD-11), Research Triangle Park, North Carolina 27711, 919-541-5641.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

Subject: Execution of Confidentiality Agreements under section 114 of the Clean Air Act

From: Sheldon Meyers for Joseph A. Cannon, Assistant Administrator for Air and Radiation

To: Office Directors, Regional Administrators

The purpose of this memorandum is to reveiw aspects of existing regulations and procedures with respect to agreements relating to confindential treatment of information claimed to be trade secret.

Obtaining the information needed for rulemaking and other activities of this office is essential to carrying out the responsibilities which have been assigned to it. Section 114 provides EPA with authority to obtain the needed information. In the past, we have generally sought to obtain the necessary information by requesting it in a "Section 114" letter or by entering appropriate facilities. We have sought, wherever possible, to obtain responses to such letters and to arrange such entry on a consensual basis, i.e., to avoid the necessity to use the enforcement mechanisms provided by Congress.

For that reason we have generally sought, and will continue to try, to respond favorably to reasonable company requests for clarification or explanation of information requests, for additional time, or for use of some more conveinent and equally useful form or manner of response. We have also established, by regulation and by contract provision, reasonable safeguards, deterrents and sanctions against the improper disclosure of information claimed to be trade secret, including the debarment of contractors (whether or not such contractors have been designated EPA representatives) and the constituting of sources as third party beneficiaries of the terms of EPA contract provisions relating to handling of such information, 40 CFR Part 2, 41 CFR 15-1.350-1, 15-1.350-2. These protections and remedies are additional to the protections and remedies afforded by other provisions of law, e.g., common law and State criminal law.

The EPA and duly designated EPA representatives have found that many companies are willing to assist us in carrying out our responsibilities, in part because they recognize that they have a stake in ensuring that EPA has timely, adequate, and accurate information. In recent years, however, EPA and its representatives have also experienced increased difficulties in obtaining companies' early and voluntary cooperation.

A common—and increasingly frequent—source of delay and difficulty in obtaining needed information has been company requests that EPA or an authorized contractor representative sign agreements relating to confidential treatment of claimed trade secret information.

This office has not always been informed of such requests nor of the nature of contractor-representatives' response to them. Requests which have been reviewed by this office and, in recent years, by the Office of General Counsel, have often been found to be inconsistent with applicable statute and regulations. Common features of such agreements have been some prejudgement as to what information constitutes nondisclosable trade secret information; reservation of some right for the company to determine what information will be provided or what part of a facility EPA or its representative may enter; reservation of some right for the company to review and edit the work of EPA officers or representatives; and provision which purported expressly or implicity to authorize enforcing the terms of a nondisclosure agreement itself against individuals or the U.S. Government. These and other features unacceptable to EPA have all too often resulted in lengthy and fruitless discussions with company representatives.

Although companies may not set conditions on their compliance with Section 114 requests, we are willing as a metter of policy to execute a standard-form memoranda where a company indicates its desire for one. Boiler-plate memoranda of this type have been used for several years. We are willing to execute such as document in part because the document is standardized and in part because its provisions are considered as protective of the company as possible under applicable statute and regulation, see 40 CFR 2.215. Execution of such a document, therefore, does not consume time and resources and, on balance, can expedite our work.

In light of this experience, this memorandum will confirm that neither EPA nor its authorized representatives may sign any confidentiality agreements or other document except the attached memoranda which (together with any nonsubstantive variations needed to adapt them to different contexts) this office believes adequate for all reasonable purposes.

[FR Doc. 84-4837 Filed 2-21-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-4-FL-1]

The Florida Radiological Emergency Management Plan for Nuclear Power Plants Site-Specific to the Crystal River Nuclear Power Plant

AGENCY: Federal Emergency Management Agency.

ACTION: Certification of FEMA findings and Determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of Florida submitted its plans relating to the Crystal River Nuclear Power Plant to the Director of FEMA Region IV on August 26, 1983, for FEMA review and approval. On November 15, 1983, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Crystal River facility, and evaluations of the joint exercises conducted on March 30, 1982, and February 22-24, 1983, in accordance with section 350.9 of the FEMA rule, and a report of the public meeting held on March 29, 1982, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the Crystal River Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting

the standards set forth in Appendix 3 of the Nuclear Regulatory Commission (NRC)/FEMA criteria of NUREG–0654/FEMA–REP–1, Revision 1.

FEMA will continue to review the status of offsite plans and preparedness associated with the Crystal River Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–4–FL–1 maintained by the Regional Director, FEMA Region IV, Gulf Oil Building, Atlanta, Georgia 30309.

Dated: February 15, 1984.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 84–4603 Filed 2–21–84; 8:45 am]

BILLING CODE 6718–01–M

[Docket No. FEMA–REP–4–FL–2]

The Florida Radiological Emergency Management Plan for Nuclear Power Plants Site-Specific to the St. Lucie Nuclear Power Plant

AGENCY: Federal Emergency Management Agency.

ACTION: Certification of FEMA findings and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Florida submitted its plans relating to the St. Lucie Nuclear Power Plant to the Director of FEMA Region IV on August 26, 1983, for FEMA review and approval. On November 15, 1983, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the St. Lucie facility, and evaluation of the joint exercises conducted on February 10–12, 1982, and January 20, 1983, in accordance with § 350.9 of the FEMA rule, and a report of the public meeting held on February 10, 1982, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the St. Lucie Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting the standards set forth in Appendix 3 of the Nuclear Regulatory Commission (NRC)/FEMA criteria of NUREG–0654/FEMA–REP–1, Revision 1.

FEMA will continue to review the status of offsite plans and preparedness associated with the St. Lucie Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–4–FL–2 maintained by the Regional Director, FEMA Region IV, Gulf Oil Building, Atlanta, Georgia 30309.

Dated: February 15, 1984.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 84–4604 Filed 2–21–84; 8:45 am]

BILLING CODE 6718–01–M

[Docket No. FEMA–REP–4–FL–3]

The Florida Radiological Emergency Management Plan for Nuclear Power Plants Site-Specific to the Turkey Point Nuclear Power Plant

AGENCY: Federal Emergency Management Agency.

ACTION: Certification of FEMA finding and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Florida submitted its plans relating to the Turkey Point Nuclear Power Plant to the Director of FEMA Region IV on August 26, 1983, for FEMA review and approval. On November 15, 1983, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Turkey Point facility, and evaluations of the joint exercises conducted on March 14–15, 1982, and June 9, 1983, in accordance with § 350.9 of the FEMA rule, and a report of the public meeting held on June 8, 1982, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the Turkey Point Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be vertified as meeting the standards set forth in Appendix 3 of the Nuclear Regulatory Commission (NRC)/FEMA criteria of NUREG–0654/FEMA–REP–1, Revision 1.

FEMA will continue to review the status of offsite plans and preparedness associated with the Turkey Point Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–4–FL–3 maintained by the Regional Director, FEMA Region IV, Gulf Oil Building, Atlanta, Georgia 30309.

Dated: February 15, 1984.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 84–4605 Filed 2–21–84; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. § 814).

Interested parties may inspect and 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, N.W., 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 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. T–3813–9

Title: The State of Hawaii and Matson Terminals, Inc. Amended Terminal Lease Agreement.

Parties: The State of Hawaii (Hawaii) and Matson Terminals, Inc. (Matson).

Synopsis: Agreement No. T–3813–9 modifies Agreement No. T–3813 by deleting Easement K and restating Section 3.1(b) as follows: "Easement A and AI which are non-exclusive use easements for operation and maintenance of crane facilities." The annual rental for the premises is reduced due to the deletion of Easement K.

Filing party: Wayne J. Yamasaki, Director of Transportation, State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 98613.

Agreement No. T–4165.

Title: The Georgia Ports Authority and Hapag-Lloyd A.G., Container Space Lease Agreement.

Parties: The Georgia Ports Authority (Authority) and Hapag-Lloyd A.G. (H.L.).

Synopsis: Agreement No. T–4165 provides for the lease of a 170 acre complex by the Authority to H.L., for exclusive use of certain paved container slots within the Authority's container terminal at Savannah, Georgia, in exchange for tonnage guarantees. The term of the agreement is for three years.

Filing party: Robert W. Goethe, Assistant Executive Director, Georgia Ports Authority, Post Office Box 2405, Savannah, Georgia 31402.

Agreement No. T–4166

Title: The Port of Oakland and Pasha Properties, Inc. Terminal Management Agreement.

Parties: The Port of Oakland (Port) and Pasha Properties, Inc. (Pasha).

Synopsis: Agreement No. T–4166 is an arrangement whereby the Port assigns to Pasha the responsibility of management, terminal operation and cargo solicitation at the Port's Outer Harbor Terminal, Berths 10, 11 and 12. The premises shall be used for the berthing of vessels and the loading and discharging of cargoes and operations related thereto. Compensation from Pasha to the Port is based on percentages relative to stated amounts of revenue received. Agreement No. T–4166 will supersede Agreement No. T–4006 between the Port and Pasha's affiliate Canal Industries Park. The agreement will terminate January 31, 1989.

Filing party: John E. Nolan, Assistant Port Attorney, Port of Oakland, 66 Jack London Square, Post Office Box 2064, Oakland, California 94604.

Agreement No. 7540–41.

Title: United States Atlantic & Gulf/Southeastern Caribbean Conference.

Parties: Concorde/Nopal Line, Puerto Rico Marine Management, Inc. (PRMSA), Sea-Land Service, Inc., Shipping Corporation of Trinidad and Tobago, Ltd. d/b/a Scott.

Synopsis: Agreement No. 7540–41 would revise the authority of the United States Atlantic & Gulf/Southeastern Caribbean Conference with respect to alternate port service.

Filing party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

Agreement No. 10051–9.

Title: Mediterranean Force Majeure Agreement.

Parties: Compagnie Maritime D'Affretement, Costa Line, Farrell Lines, Inc., Hellenic Lines, Ltd., Ibero Lines S. A., Italian Line, Jugolinija, Lykes Bros. Steamship Co., Inc., Prudential Lines, Inc., Sea-Land Service, Inc., Spanish Line, Zim Israel Navigation Co., Ltd.,

Synopsis: Agreement No. 10051–9 would amend the basic agreement (1) to extend the scope to include the trades between non-Mediterranean ports on the Iberian peninsula and ports on the U.S. Atlantic and Gulf Coasts; (2) to provide that a carrier may withdraw from the Agreement without penalty by providing 60 days' notice in writing of its intention to withdraw; and (3) to provide that the carriers party to the agreement, by a vote of unanimous less one of the entire membership, may expel any carrier that does not abide by the terms of the Agreement.

Filing party: John A. DeVierno, Esquire, Billig, Sher & Jones, P.C., 2033 K Street, N.W., Washington, D.C. 20006.

Agreement No. 10266–10.

Title: Intercontinental Transport (ICT) B.V./Compagnie Generale Maritime Space Charter.

Parties: Compagnie Generale Maritime, Intercontinental Transport (ICT) B.V.

Synopsis: Agreement No. 10266–10 would modify the space charter agreement between the parties to permit them to coordinate their services by scheduling and advertising their sailings in the trade so as to promote optimum vessel utilization on the basis of available cargo and vessel characteristics.

Filing party: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Sheppard, P.C., 1800 Massachusetts Avenue, Northwest, Washington, D.C. 20036.

Dated: February 16, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84–4636 Filed 2–21–84; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 1343]

Chesapeake Shipping, Inc.; Order of Revocation

On February 8, 1984, Chesapeake Shipping, Inc., 5105 Andard Avenue, Baltimore, MD 21226 voluntarily surrendered its Independent Ocean Freight Forwarder License No. 1343 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(e) dated September 27, 1983;

It is ordered, that Independent Ocean Freight Forwarder License No. 1343, be revoked effective February 8, 1984, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Chesapeake Shipping, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84–4633 Filed 2–21–84; 8:45 am]

BILLING CODE 6730–01–M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Travel All Over The World, Inc. dba Travel All; 108 N. State Street, Suite 910, Chicago, IL 60602; Officers:

Ibrahim Y. Elgindy President; Mohamed N. Anwar, Manager
Richard G. Salas, 118 Inglewood Drive, Glen Burnie, MD 21061
Frank E. Thompson dba F.E.T. International, 6215 Golden Forest, Houston, TX 77092
Island Forwarders, Inc., 5 Palm Court, Isle of Palms, SC 29451; Officer: Theresa H. Kessery, President/Sole Officer

Dated: February 16, 1984.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-4635 Filed 2-21-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Bank of New York Co. Inc., et al.; Applications To Engage De Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company Inc.*, New York, New York; to engage *de novo* through its subsidiary, Arcs Mortgage, Inc., in making, acquiring or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the account of the customer or for the account of others, such as would be made by a mortgage company. Comments on this application must be received not later than March 8, 1984.

2. *Citicorp*, New York, New York; to engage *de novo* through its subsidiary Citicorp Acceptance Company, Inc. in the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes. Comments on this application must be received not later than March 8, 1984.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *United Penn Corporation*, Wilkes-Barre, Pennsylvania; to engage *de novo* through its subsidiary, UniPenn Life Insurance Company, Wilkes-Barre, Pennsylvania, in underwriting, as reinsurer, credit life insurance directly related to extensions of credit by United Penn Bank.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American Ligonier Bancorp, Inc.*, Ligonier, Indiana; to engage *de novo* in the sale of credit life and accident and health insurance directly related to the extension of credit by its subsidiary bank American State Bank, Ligonier, Indiana.

2. *Continental Illinois Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Continental Illinois Company Financial Futures, Chicago, Illinois, in the execution and clearance, for nonaffiliated customers, of financial futures contracts including those in bullion, foreign exchange, government securities (both U.S. and foreign), and money market investments on various commodity exchanges; and provision of incidental support and advisory services to its customers. These activities will be conducted in the United States and abroad.

3. *Farmers National Bancorp, Inc.*, Genesso, Illinois; to engage *de novo* through its subsidiary, Farmers National Bankware, Inc., Omaha, Nebraska, in acting as investment or financial advisor; providing management consulting advice to nonaffiliated financial institutions; and providing computer programs and other data processing services.

Board of Governors of the Federal Reserve System, February 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4602 Filed 2-21-84; 8:45 am]

BILLING CODE 6210-01-M

First Haralson Corp.; Formation of a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the 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, N.W., Atlanta, Georgia 30303:

1. *First Haralson Corporation*, Buchanan, Georgia; to become a bank holding company by acquiring 96.42 percent of the voting shares of First National Bank of Haralson County, Buchanan, Georgia. Comments on this application must be received not later than March 15, 1984.

Board of Governors of the Federal Reserve System, February 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4599 Filed 2-21-84; 8:45 am]

BILLING CODE 6210-01-M

First of Huron Corp.; Formation of, Acquisition by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (49 FR 794) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless othewise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of Huron Corporation,* Bad Axe, Michigan; to acquire 100 percent of the voting shares of The State Bank of Port Hope, Port Hope, Michigan, and to engage through a proposed *de novo* subsidiary to issue, on a reinsurance basis, credit life and disability insurance covering the credit life and disability insurance policies issued to customers of Applicant's subsidiary banks.

Board of Governors of the Federal Reserve System, February 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4600 Filed 2-21-84; 8:45 am]

BILLING CODE 6210-01-M

Saver's Bancorp, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (40 FR 794) to become a bank holding company or to acquire a bank or bank holding company. 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)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. 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.

Comments regarding this application must be received not later than March 14, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Saver's Bancorp, Inc.,* Littleton, New Hampshire; to become a bank holding company through the acquisition of 100 percent of the voting shares of The Saver's Bank (Bank), Littleton, New Hampshire and 14 percent of the voting shares of North Country Bank, Berlin, New Hampshire.

Board of Governors of the Federal Reserve System, February 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4597 Filed 2-21-84; 8:45 am]

BILLING CODE 6210-01-M

USBancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. 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 is available for immediate inspection at the Federal Reserve Bank indicted. Once the application has been accepted for processing, it will also be available for the inspection at the offices of the Board of Governors. Interested persons may express their views in writting to the Reserve Bank or to the offices of the Board of Governors. 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 14, 1984.

A. **Federal Reserve Bank of Philadelphia,** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *USBancorp, Inc.,* Johnstown, Pennsylvania; to acquire 100 percent of the voting shares or assets of Three Rivers Bank & Trust Company, Pittsburgh, Pennsylvania. Comments on this application must be received not later than March 12, 1984.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *F and M Holding Company, Inc.,* Manchester, Georgia; to become a bank holding company by acquiring 80 percent of the voting shares of F & M Bank and Trust Company, Manchester, Georgia.

2. *Tucker Brothers, Inc.,* and *Tucker Holding Company, Inc.,* Jacksonville, Florida; to acquire 100 percent of the voting shares of Tucker Bank of Jacksonville, Jacksonville, Florida.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690;

1. *Bippus State Corporation,* Bippus, Indiana; to become a bank holding

company by acquiring 80 percent of the voting shares of The Bippus State Bank, Bippus, Indiana.

2. *Geiger Corporation*, Edina, Minnesota; to become a bank holding company by acquiring 98.8 percent of the voting shares of Iowa National Bank & Trust, Lytton, Iowa.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Halton City Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Halton City Bancshares, Inc., Dallas, Texas.

Board of Governors of the Federal Reserve System, February 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4601 Filed 2-21-84; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

February 15, 1984.

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 approval of a new report

1. Report title: Demonstration Project for Dissemination of Annual Percentage Rates.

Agency form number: FR 3029a, FR 3029b.

Frequency: FR 3029a—for 13 months; FR 3029b—twice.

Reporters: financial institutions (FR 3029a); individuals (FR 3029b).

Small businesses are affected.

General description of report:

Respondent's obligation to reply is voluntary; a pledge of confidentiality is not promised.

Congressionally mandated study to determine the feasibility and value of a "shopper's guide to credit."

Board of Governors of the Federal Reserve System, February 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4596 Filed 2-21-84; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

February 15, 1984.

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: Country Exposure Report.

Agency form number: FFIEC 009.

Frequency: Quarterly.

Reporters: State member banks and bank holding companies.

Small businesses are not affected.

General description of report:

Respondent's obligation to reply is mandatory [12 U.S.C. 248(a), 1844(c), and Section 907 of the International Lending

Supervision Act]; a pledge of confidentiality is promised for the existing reports.

This report collects information on international claims of U.S. banks and bank holding companies used for supervisory and analytical purposes. This information is also used to analyze the country exposure of banks in order to determine the degree of risk in their portfolios and the possible impact on U.S. banks of any adverse developments in particular countries.

Request for approval of a new report

1. Report title: Country Exposure Information Report.

Agency form number: FFIEC 009a.

Frequency: Quarterly.

Reporters: State member banks and bank holding companies.

Small businesses are not affected.

General description of report:

Respondent's obligation to reply is mandatory [12 U.S.C. §§ 248(a), 1844(c), and Section 907 of the International Lending Supervision Act]; a pledge of confidentiality is not promised.

Report will disclose information on international claims for U.S. banks and bank holding companies used for supervisory and analytical purposes in determining the degree of risk in their portfolios and the possible impact on U.S. banks of any adverse developments in particular countries.

Board of Governors of the Federal Reserve System, February 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4595 Filed 2-21-84; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Wednesday, March 14, and Thursday, March 15. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The March 14 session is expected to begin at 1:00 p.m. and to continue until 5:00 p.m. The March 15 session is expected to begin at 9:00 a.m. and to conclude at 3:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will consider the following topics:

1. *Federal Reserve Response to the Council's Report on the System's Implementation of the Community Reinvestment Act of 1977 (CRA)*

Discussion of Federal Reserve actions regarding recommendations in the Council's CRA Report.

2. *Service Charges Imposed by Financial Institutions*

Discussion regarding (1) the nature of service charges, how they are computed, and why they exist; and (2) what could be done to prevent abuses or the potential for abuse in this area.

3. *Administration of the Consumer Advisory Council*

Report of the Council's Policy and Planning Committee on its long-range agenda planning and on recommendations for improving the operation of the Council and its committees.

4. *Recommendations of Vice President Bush's Task Group on Regulation of Financial Services*

Discussion of the implications of recommendations recently proposed by the Vice President's task group.

5. *Federal Reserve's Implementation of the Equal Credit Opportunity and Fair Housing Acts*

Discussion of (1) the feasibility of expanding data collection and analysis to test the effectiveness of the federal anti-discrimination statutes and regulations; and (2) recently proposed amendments to the fair housing law.

6. *Second-Mortgage Lending Practices*

Discussion of (1) practices that may be harmful to the consumer and that are engaged in by certain creditors in second-mortgage transactions; and (2) whether the Board through its supervisory responsibilities for bank holding companies is in a position to discourage these practices on the part of creditors affiliated with bank holding companies.

7. *Regulatory Update*

Status report on recent Board regulatory actions in the area of consumer financial services.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Friday, March 9, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Mr. Joseph R. Coyne Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, February 15, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-4594 Filed 2-21-84; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0482]

Fee Schedules for Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Fee Schedule and Float Reduction Plan for the Automated Clearing House Service.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board"), pursuant to the requirements of the Monetary Control Act of 1980 ("MCA") (12 U.S.C. 248a), has adopted a revised fee schedule for its automated clearing house ("ACH") services and a plan to reduce and price ACH float over the next year. The revised fee schedule is as follows:

BASIC ACH TRANSACTION FEES

	Intra-ACH	Inter-ACH		
		Unsorted deposit	Presorted deposit	New York [1]
Debits originated (cents)	1.5	3	2.5	2.5
Debits received (cents)	.5	1	1	.5
Credits originated (cents)	.5	1	.5	.5
Credits received (cents)	1.5	3	3	2.5

FIXED ACH FEES

Deposit fees:	
Tape handling	$3 per tape.
File processing	$1 per file.
Receiver handling fees:[2]	
Non-electronic	$1.75 per delivery.
Electronic [3]	$0.75 per transmission.
Telephone advice fees:	
Telephone advices, including ten pieces of information.	$2.50.
Each additional piece of information.	$0.05.
Night time deposit surcharges:	
Debits originated	6 cents.
Credits originated (next-day settlement only).	3 cents.

[1] These fees would apply where the Federal Reserve does not operate a commercial ACH.

[2] Receiver handling fees will be assessed once a day per endpoint when ACH transactions are delivered.

[3] Electronic endpoints are defined as endpoints that receive ACH transactions via data transmission or receivers that pick up ACH transactions at the Federal Reserve.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202/452-2231) or Florence M. Young, Program Manager (202/452-3955), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452-

3625) or Elaine M. Boutilier, Attorney (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The MCA requires that fee schedules be developed for Federal Reserve Bank services based on pricing principles established by the Board. In 1982, the Board determined to phase out its incentive pricing policy for ACH services. Accordingly, the ACH fee schedule, established on December 30, 1982, provided for recovery of 40 percent of the costs of providing commercial ACH services. Consistent with the phase-out of incentive pricing for commercial ACH services, in September 1983, the Board requested public comment on a restructured fee schedule which would recover 60 percent of commercial ACH costs. 48 FR 44650 (September 29, 1983). In addition, the Board requested comment on plans for eliminating and/or pricing ACH float, and potential near-term and long-term service enhancements. A total of 123 comments were received from the public.

Background

The ACH fee schedule that was implemented on December 30, 1982, was based on an incentive pricing policy, as noted above. The schedule is a national schedule, includes only per item fees, and assesses fees only to receivers of funds—institutions sending debits to collect payments and institutions receiving credits, such as salary payments.

The proposed fee schedule differed from the current fee schedule in several significant respects. First, the majority of fees were set at the district rather than national level. Second, per item fees were supplemented with fixed fees to recover the costs associated with handling deposits, preparing transactions for delivery and delivering them, and advising institutions of the receipt of ACH payments by telephone. Third, two surcharges were proposed that would be assessed to all originators. One, a low volume receiver surcharge, was intended to recover a portion of the costs incurred in providing services to a large number of small institutions. The other, an interregional surcharge, was intended to recover the costs of processing ACH transactions that must be handled by two Federal Reserve offices. In each case, the surcharge was based on the benefits to originators from being able to send transactions to many depository institutions throughout the country. Finally, it was proposed to assess privately operated ACHs the same fees charged to other users, when they use the same services.

Proposed ACH Fee Structure

Public commenters discussed a number of issues concerning the proposed ACH fee structure. Their concerns fell into three broad categories: (1) The pricing principles underlying the fee structure; (2) the specific fees proposed; and (3) the approach for pricing the ACH services used by privately operated ACHs.

Less than half of the commenters discussed the use of incentive pricing for the ACH service. All but two of these respondents supported the planned phase-out of the policy and indicated that an immediate move to full-cost pricing for the Federal Reserve's commercial ACH services would negatively affect ACH volume growth. Therefore, the Board has determined to continue its phase-out of incentive pricing as planned. Accordingly, the new fee schedule will recover 60 percent of the costs of commercial ACH services for 1984.

The concept of value pricing has been employed, to some extent, since ACH fees were originally implemented in August, 1981. A majority of respondents that discussed the concept of value pricing indicated that the Federal Reserve should base its fees solely on the costs it incurs in providing services. A slight majority of commenters that specifically discussed the concept of benefit-flow pricing also indicated that it was inappropriate for the Federal Reserve to make judgments about perceived benefits. Several commenters stated that the use of value pricing was inconsistent with the intent of the MCA and would inhibit private sector competition.

After taking into account the ACH incentive pricing policy, the proposed ACH fees were set so that they would recover the total costs, plus the PSAF, of providing commercial ACH services. Therefore, the proposed ACH fee schedule is consistent with the MCA, which specifies that:

> Over the long run, fees shall be established on the basis of all direct or indirect costs . . . including interest in items credited prior to actual collection, overhead, and an allocation of imputed costs which takes into account the taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm. . . .[*]

[*] 12 U.S.C. 248a(c)(3).

The use of value pricing has a sound basis in economic theory. Scale economies exist in the provision of ACH services. The use of value pricing assists in the realization of the scale economies and saves real resources, because it stimulates demand by establishing prices that reflect various users' demand elasticities, that is, the relative benefits users realize.

An update of the analysis performed in 1982 indicated that receivers of funds still derive greater benefits from the ACH than payors of funds. Although all participants appear to be able to realize some operating cost savings through the ACH, receivers of funds have the additional benefit of earlier credit for payments than they would receive in payments by check. Conversely, payors of funds are charged for payments earlier than they would be if they made payments by check. The opportunity costs associated with the value of float that is lost when the ACH is used has been one of the principal deterrents to ACH volume growth.

One of the reasons for the Federal Reserve's involvement in the ACH was to provide support for the development of an electronic payments service that would improve the efficiency of the nation's payments mechanism. The Federal Reserve has played an active role in promoting the ACH since its inception during the early 1970s. The Federal Reserve's pricing policies are consistent with its historic efforts to promote the ACH. Further, to the extent that Federal Reserve commercial ACH fees are set at levels that stimulate demand for ACH services, the Federal Reserve's use of value pricing should assist depository institutions in their efforts to increase ACH usage among their customers since the fees reflect the relative demand for ACH services.

Similarly, the use of value pricing by the Federal Reserve should not inhibit private-sector competition. The private sector has as much or more flexibility in setting prices as the Federal Reserve, and, in fact, value pricing is often used by depository institutions in pricing their payment services. The Federal Reserve has adopted pricing principles that require the Reserve Banks to match costs and revenues for each separately priced service. This requirement is more stringent than the MCA, which only indicates that all Reserve Bank services must be explicitly priced and that fees must be based on all direct and indirect costs. Further, users of payments services, including ACH services, consider a number of criteria, such as service levels, quality, and price, in determining

the supplier from which to obtain services. Therefore, price is not the only basis upon which service suppliers compete. Users of payments services are frequently willing to pay higher fees for higher levels of service or to pay a premium for a high quality of service.

Accordingly, the Federal Reserve's use of value pricing satisfies the requirements of the MCA, provided that the fees established are intended to recover all direct and indirect costs plus the PSAF, after taking into account the Federal Reserve's incentive pricing policy. Further, because scale economies exist in ACH operations, the use of value pricing should stimulate demand for ACH services and, thereby, provide for a more efficient use of real resources. Therefore, the Board determined that the ACH fee schedule continue to incorporate value pricing concepts.

Nearly 60 percent of the commenters discussed the proposal to assess fees that varied by Federal Reserve District. Approximately one-half of the commenters favored the proposal, while the other half preferred national fees. Opponents of regional fees indicated that they would encourage geographic volume shifts that might create a competitive imbalance among depository institutions and exacerbate the unit cost differentials between high and low volume Federal Reserve processing facilities.

During 1983, approximately 60 percent of all ACH transactions originated were interregional payments. Therefore, based on the composition of ACH transactions, it appears that the ACH service is primarily national in character.

Because the ACH is still an emerging payments mechanism, as ACH volume levels increase and the transition to a primarily electronic mechanism is accomplished, unit processing cost differences among Federal Reserve offices should be reduced. To the extent that higher ACH fees in lower volume Federal Reserve Districts could act as a deterrent to volume growth, such a move would be inconsistent, at this time, with the Federal Reserve's broader goal of promoting the ACH.

The Board decided that it is premature to implement regional ACH fees. Because the ACH is not a mature payments service and has not yet reached its potential as a primarily electronic mechanism, the use of regional fees may not reflect the long-run cost structure of the ACH. However, as the ACH service matures, the Federal Reserve may determine that a regional rather than a national fee structure is more appropriate.

Proposed Fee Schedule—Commenters discussed the overall impact of the proposed fee schedule as well as the individual fees. A number of commenters suggested that the proposed fee schedule, with its various surcharges, would inhibit future volume growth. Several commenters also indicated that the overall impact of the proposed fees resulted in a departure from benefit-flow pricing.

A comparison of the overall impact of the proposed fee schedule with the existing fees indicated that the proposed fee schedule departed from the concept of pure benefit-flow pricing in two ways. First, all ACH participants would be assessed fees, not just receivers of funds (originators of debit transactions and receivers of credit transactions). Second, the fees that would be assessed to the various participants did not reflect the relative benefits realized by each. Under the proposal, fees assessed to receivers of credits were lower than the present fees, even though they achieve the greatest benefit from the ACH. On the other hand, the charges to originators of credit transactions increased the most although these participants realize a lesser benefit from the ACH due to the loss of float. From the standpoint of originators of credit transactions, the level of the proposed charges could have negatively affected volume growth.

The Board has determined that the use of value pricing (and thus benefit-flow pricing) assists in stimulating ACH volume growth, yet at the same time, the use of these concepts does not preclude assessing some charges to each ACH participant, provided that the overall impact of the fee schedule reflects the relative benefits realized by each participant. Therefore, the ACH fee schedule was modified to retain the concept of benefit-flow pricing but also to assess fees to all participants.

Fixed Deposit Fees—The fixed deposit fees included in the proposed fee schdule were to be assessed for each file [5] an ACH originator deposited with the Federal Reserve. Approximately 60 percent of the commenters that discussed fixed deposit fees supported the concept. Respondents that opposed the fees indicated that they discriminated against low volume originators.

The costs involved in handling the magnetic tapes containing ACH deposit as well as processing the files included on the tapes or files transmitted to the Federal Reserve are essentially the same regardless of the number of transactions inclued in the deposit. Since deposit handling costs are fixed, operating costs cannot be recovered effectively through the use of transaction fees alone. Further, experience in the check collection service has indicated that fixed fees provide an incentive for users of payments services to use them efficiently.

Some commenters pointed out that fixed deposit fees would affect originators of ACH transactions differently. It is true that the per transaction impact of the proposed fixed deposit fee would be greater for low volume originators than for high volume originators. However, the per transaction impact of any fixed fee declines sharply as volume increases.

Finally, some commenters indicated that tape handling was more costly than file processing because tape handling is a labor-intensive activity and file processing is an automated function. A detailed analysis of the costs incurred in processing incoming ACH deposits indicated that the fixed costs of handling tapes are approximately three times greater than those for file processing.

Because the costs incurred in handling magnetic tapes and processing files do not vary in relation to the number of transactions deposited, the Board approved a fixed deposit fee. However, as the costs of handling magnetic tapes are considerably higher than the costs of processing files, the proposed deposit fee, which was originally based solely on the number of files deposited, was modified to include a tape handling fee and a file fee. These fees will apply on a per processing cycle basis for each magnetic tape and each file an originator deposits, unless an originator deposits more than one magnetic tape or file at the request of the Federal Reserve. In this case, the fee may be waived. For ACH originators that deliver deposits via data transmission only the file fee would apply.

Fixed Receiver Handling Fees—The proposed fixed receiver handling fees were to be assessed on the basis of delivery points, or endpoints, and reflected the higher costs of serving non-electronic versus electronic receivers. About half of the respondents that discussed the receiver handling fee supported the concept. However, a number of commenters indicated that the fees could potentially have a negative impact on low volume ACH participants.

As in the case of the fixed deposit fee, the fixed receiver handling fees was

[5] A file is defined as a group of transactions addressed to a specific Federal Reserve office. All unsorted deposits are addressed to the local Federal Reserve office; presorted deposits would include files addressed to several Federal Reserve offices.

intended to recover the fixed costs associated with generating ACH output, preparing it for delivery, and effecting delivery over the road or via data communications. Since these costs are comparable over wide volume ranges, the fixed receiver handling fee parallels the Reserve Bank's cost structure.

Currently, about 20,000 depository institutions participate in the ACH. However, ACH transactions are delivered to about 10,000 endpoints, since many smaller institutions have their ACH transactions intercepted by correspondent banks or service bureaus. Based on 1983 ACH volume and 10,000 endpoints, the average ACH participant received over 60 transactions per day. Thus, the impact of the proposed receiver handling fee would have ranged from less than 1.0 cent per transaction to about 3.0 cents per transaction. Although the effect of a receiver handling fee would be greater for very low volume institutions, these institutions benefit from being about to provide the ACH services their customers demand and also from achieving operating cost savings through use of the ACH. As a result, the impact of the proposed receiver handling fee should not be a significant factor in smaller institutions' decision to participate in the ACH.

The Board has determined that a fixed receiver handling fee is necessary to enable the Federal Reserve to recover the costs of providing ACH services to low volume institutions. By assessing the fee on a delivery point, or endpoint, basis, as proposed, its impact on smaller institutions whose ACH transactions are processed by correspondent banks or service bureaus will be reduced. Finally, the receiver handling fees in the original proposal were set at a lower rate for electronic receivers than for non-electronic receivers. Because of the efficiency of electronic delivery mechanisms, this differential is included in the final fee schedule. In addition, a number of depository institutions located in Federal Reserve cities, pick up their ACH transactions at the local Federal Reserve office. Because these arrangements reduce transportation costs, the electronic handling fee rather than the non-electronic handling fee will be assessed to these institutions.

Telephone Advice Fees—In conjunction with permitting all types of ACH transactions to be deposited at the night time deposit deadline, the Reserve Banks also expanded their telephone advice services for depository institutions that do not receive these night cycle transactions on the settlement date. Because the amount of information requested may vary, a fixed fee for the first ten pieces of information and a variable fee for each additional piece of information was proposed. A majority of respondents supported these proposed fees.

The provision of telephone advice services is a labor-intensive activity and fixed costs are incurred in accumulating data and in placing telephone calls. However, the amount of data provided to each receiving institution may vary due to differences in transaction volumes or the needs of the receiving institution. As a result, there is some variability in the costs of this service. Therefore, the Board determined that the telephone advice fee should be included in the fee schedule as proposed.

Basic Transaction Fee—Under the proposal, the basic transaction fees were intended to recover the costs of editing and sorting transactions and were to be assessed to originators of debit transactions and receivers of credit transactions. Several commenters suggested that all ACH participants realize benefits from the ACH and suggested that transaction fees be assessed to both parties to a transaction, like they are for the wire transfer of funds service.

Because the ACH was originally conceived as a substitute for paper checks, fees for ACH services were established on a comparable basis, that is, they have been assessed to receivers of funds and to only one party. However the ACH is an electronic payments service that offers its users many benefits they could not obtain through paper-based payments services, such as, increased certainty, convenience, and security. Thus, as commenters pointed out, all participants derive benefit from the ACH. Therefore, transaction fees will be assessed to all ACH participants, but the benefit-flow concept will be retained to reflect the relative benefits of each participant.

Low Volume Receiver Surcharge—The proposed low volume receiver surcharge was to be assessed to ACH originators for each transaction sent to an ACH participant that received fewer than 500 transactions per day. This element of the proposed fee structure was opposed by 101 commenters and was supported by only four respondents. Commenters indicated that the surcharge would inhibit volume growth because it would have a significant impact on originators of credit transactions. Further, commenters indicated that originators of ACH transactions do not influence the destination of transactions. Rather, consumers and receiving companies seslect their receiving depository institutions. Finally, commenters indicated that the low volume receiver surcharge was an operationally complex proposal both from the perspective of depository institutions and the Federal Reserve.

While it is true that neither depository institutions originating ACH transactions nor their corporate customers determine the institution that will receive an ACH transaction, originators do benefit from a broad base of receiving institutions. However, given the current state of ACH development, it appears the costs and potential complexity of implementing the low volume receiver surcharge could negatively impact future volume growth. Therefore, until additional analysis is done, the low volume receiver surcharge will not be implemented.

Interregional Surcharge—The current ACH fee schedule includes an interregional differential that is assessed on a benefit-flow basis to originators of debit transactions and receivers of credit transactions. The fee schedule that was published for public comment proposed assessing the interregional differential, or surcharge, to originators of both debit and credit transactions. In addition, a lower surcharge was proposed for transactions included in presorted deposits than for transactions included in unsorted or mixed deposits.

A majority of commenters supported the proposal. However, a few commenters indicated that the surcharge should continue to be assessed on a benefit-flow basis. Other commenters suggested that the surcharge should be split between originators and receivers of ACH transactions.

Assessing the interregional surcharge to all ACH originators, in conjunction with assessing them fixed deposit fees and the low volume receiver surcharge, was determined to be inconsistent with the concept of benefit-flow pricing. Therefore, the fee schedule was modified to reflect more closely the relative benefits realized by ACH participants. This was done in part, by assessing the interregional differential to all ACH participants in the same way as basic transaction fees. Further, because less processing is required when presorted desposits are received, a lower fee will be asessed to originators depositing presorted transactions.

Night Time Deposit Surcharges—The proposed fee schedule, like the current fees, included surcharges that would be assessed to originators of both debit and credit transactions deposited at the

night time deposit deadlines. Commenters indicated that the night time deposit surcharges should reflect only the specific costs associated with night time operations and that these costs would logically be the same for both debit and credit transactions.

As indicated in the discussion of value pricing, it is appropriate for the Federal Reserve to adjust fees for individual components of priced services so that they reflect the relative benefits realized by users. Originators of debit transactions realize substantial benefits from the use of night time operations through improved funds availability. Conversely, the only benefit derived by originators of next-day credit transactions from the night time deposit deadline is additional processing time. Furthermore, there is also a cost basis for assessing different fees, because the majority of float generated as a result of delayed interregional transmissions is due to debit transactions processed at night.

Because originators of debit and credit transactions realize different benefits and because there are processing costs differences, a higher night time deposit surcharge will continue to be assessed to originators of debit transactions than to originators of next-day settlement credit transactions. No night time deposit surcharge will be assessed to originators of two-day settlement credits.

Corporate Trade Payment Fees—Because very low volumes of corporate trade payments ("CTP") were being processed through the ACH, the proposal issued for public comment indicated that the CTP fee schedule implemented on June 2, 1983, would remain in effect until more experience was gained with the application. Very few commenters discussed this aspect of the proposal, but those that did generally agreed that the current fee schedule should not be modified at this time. Accordingly, the current fee schedule will remain in effect, with the exceptions that fixed deposit, receiver handling, and telephone advice fees will apply to all ACH applications, including the CTP application.

Proposed Fees for Privately Operated ACHs—Fees currently assessed to New York Automated Clearing House Association ("NYACH") are based on the same concepts underlying the present national fee structure. The basic transaction fees, however, are lower than the fees assessed to other ACH participants, because the New York Federal Reserve Bank does less processing than Reserve Banks that operate a commercial ACH. The following changes in this philosophy were proposed: (1) When privately operated ACHs use the same services that are used by depository institutions, the same fee should be assessed and (2) when unique services are provided to privately operated ACHs, they should be priced separately to reflect the actual costs incurred in providing the services.

In its response the New York Clearing House ("NYCH") indicated that the nature and level of the proposed fees would discourage competition with the Federal Reserve and might affect the Clearing House's ability to continue to operate an ACH. Specifically, the NYCH indicated that the fee structure required NYACH to pay for services that it does not use, such as, commercial ACH processing, ACH return item processing, and customer support services. Thus, the NYCH concluded that ACH fees for privately operated ACHs had not been sufficiently unbundled. However, in discussing the proposal to unbundle the settlement services provided to NYACH, the Clearing House questioned the fee because it "is not assessed against any Federal Reserve operated ACH." Finally, the NYCH indicated that the proposed, unbundled deposit, settlement, and delivery fees were higher than comparable fees in other Federal Reserve Districts.

The question of whether the proposed fee schedule required NYACH to pay for services that it does not use can be addressed by reviewing the individual elements of the fee schedule. First, NYACH deposits interregional ACH transactions in files that are presorted by receiving Federal Reserve office. The Reserve Banks plan to make this deposit option available to all ACH originators when the new ACH fee schedule is implemented. Accordingly, it was proposed that NYACH be assessed the same transaction fees and interregional surcharges as any presorted depositor. In this case, it is clear that NYACH receives the same service as other ACH originators, and this element of the proposal treats NYACH equitably.

Second, the basic transaction fees for debits originated and credits received were the same as the fees proposed in other Federal Reserve Districts. As indicated above, this is appropriate for presorted debit transactions. However, in the case of credits received, the proposed fee schedule did not reflect the fact that the New York Bank does less processing. In regions where the Federal Reserve does not operate a commercial ACH, transaction fees assessed to privately operated ACHs for receiving ACH transactions should be lower than the fees assessed to ACH participants where the Federal Reserve operates an ACH.

Third, a settlement charge consisting of a fee per settlement statement as well as a fee per settlement entry was proposed. This fee was intended to recover costs incurred in processing settlements for NYACH. Since commercial ACH transactions are processed by all other Reserve offices, the settlement of transactions is not a separate activity but an integrated processing step. As such, the costs associated with settlement are recovered through basic transaction fees.

The Federal Reserve has defined its net settlement services as the posting of net debit or net credit entries to the reserve or clearing accounts of institutions participating in clearing arrangements where the Federal Reserve does not process any of the underlying transactions. In the case of net settlements processed for the NYACH, the net entries represent both local ACH transactions, which the Federal Reserve is not involved in processing, and interregional ACH transactions, which the Federal Reserve is involved in processing. Because of the unique nature of the settlement services provided to NYACH, it is considered to be appropriate to continue to recover the costs the New York Bank incurs through transaction fees, for the present. The handling of settlements that combine transactions that the Federal Reserve has not processed with those it has been involved in processing is a complex issue. In addition, it is an increasingly important issue because procedures currently in place result in float generated by privately operated ACHs being reflected on the Federal Reserve's balance sheet. Therefore, a comprehensive analysis is being conducted of the issues concerning accounting and settling for ACH transactions in regions where the Federal Reserve does not operate a commercial ACH. (It should be noted that if a privately operated ACH requested net settlement services for ACH transactions that the Federal Reserve is not involved in processing, it would be assessed the Federal Reserve's net settlement fees.)

Fourth, it was proposed to assess fixed deposit fees and a combined settlement and ground delivery fee to privately operated ACHs. The fixed deposit fee and the ground delivery fee were set on the same basis as the fees for all ACH participants because the services provided to depository institutions and private-sector ACHs are essentially identical. The NYACH's primary concern was the level of the fees. Because the Board determined that

the ACH should continue to be considered a national service, the concerns raised by many commenters, including NYCH, regarding the range of the proposed fixed fees have been addressed by the adoption of uniform fixed fees.

ACH Software—The proposal issued for public comment also indicated that ACH associations wishing to use the Federal Reserve's new ACH software package, ACH–84, would be assessed a licensing fee as well as an annual maintenance fee. The ACH–84 software package is currently being developed by Federal Reserve staff and should be completed during the fourth quarter of 1984.

Commenters indicated their belief that the National Automated Clearing House ("NACHA") as well as the Federal Reserve has propiertary rights of the ACH–84 software, since the current ACH software is jointly owned by the Federal Reserve and NACHA. In addition, because costs associated with software development are included in the cost base used in setting commercial ACH fees, respondents believed that it was inappropriate for the Federal Reserve to assess a licensing fee. Finally, a few commenters questioned the Federal Reserve's legal authority to sell software. Because of the broad range of issues raised, additional analysis will be conducted before the Board determines whether to adopt the licensing and maintenance fees.

ACH Float

ACH float is generated whenever reserve or clearing accounts of the originators of ACH transactions are credited or debited before the offsetting debit or credit is posted to the receiving depository institution's account.[6] In order to comply with the terms of the MCA, the Reserve Banks proposed to: (1) Reduce ACH float to the extent possible through operational improvements; (2) eliminate certain types of ACH float by modifying settlement procedures; and (3) price the remaining float.

Delayed Interregional Transmission Float—The primary cause of ACH float is delayed transmissions of interregional transactions between Federal Reserve offices. During 1983, delayed transmission float amounted to approximately $36 million on a daily average basis and accounted for 53 percent of total ACH float. The Reserve Banks are in the process of implementing operating improvements that are expected to reduce this float to approximately $7.0 million by the fourth quarter of 1984. It was proposed to incorporate the annualized value of projected, fourth quarter, 1984 delayed interregional transmission float in the cost base used to derive the revised ACH fees. A majority of respondents indicated that it is inappropriate for the Federal Reserve to charge for its operational inefficiencies and that such a step would remove the incentives for further improving operations.

Inclusion of this float in the commercial ACH cost base is consistent with the MCA, since it prices Federal Reserve float remaining after implementation of operational improvements. Furthermore, this action will increase the Reserve Banks' incentives for improving operational procedures because including the value of this float in the cost base results in higher ACH fees. Therefore, the annualized value of projected, fourth quarter, 1984, delayed interregional transmissions float will be included in the 1984 commercial ACH cost base.[7]

Return Item Float—Float resulting from the inability to process ACH paper return items within the current availability schedules is the second largest source of ACH float. During 1983, return item float amounted to nearly $18 million on a daily average basis and accounted for 26 percent of total ACH float. The request for public comment proposed to eliminate the majority of this float by changing the current availability schedule for interregional ACH paper return items from same-day to next-day settlement. The majority of respondents supported this proposal, and it has been adopted by the Board. In conjunction with this action, to encourage greater use of the automated ACH return item process, the Reserve Banks plan to change the current availability schedule for automated return items deposited at the morning deposit deadline from next-day to same-day settlement. It is anticipated that the majority of return item float should be eliminated by these modifications. Any residual float will be included in the ACH cost base the next time ACH are set.

Midweek Closings and Non-standard Holiday Float—Float resulting from the inability to post ACH transactions to the accounts of depository institutions that are closed during the middle of the week (midweek closings) or on non-standard holidays amounted to about $4.0 million on a daily average basis in 1983. As a means of eliminating this float, it was proposed to debit or credit the reserve or clearing account of the closed institution as though the institution were open for business. A majority of commenters supported the proposal, although some respondents stated that accounts should not be charged when state law requires depository institutions to be closed.

Although a majority of the respondents supported the proposal to charge the accounts of institutions closed during the middle of the week as though they were open, the Board determined that it is appropriate to offer these institutions the same options as these recently adopted for the check collection service. 49 FR 4196 (January 30, 1984).

With respect to ACH debit transactions, depository institutions that elect to close during the business week will be offered the following options: (1) Having the Reserve Bank debit its account for items that are made available to it and would normally be settled on that day if the institution were open for business; or (2) paying for the value of float that is generated. Under the second option, depository institutions may pay for float explicitly through one of the following procedures: (1) Payment may be made through an "as of" adjustment to an institution's reserve or clearing account to correct for float after it has occurred; or (2) payment may be made by an explicit charge. In the case of ACH credit transactions, depository institutions' accounts will be credited for transactions that settle on midweek closing days.

With respect to float arising from institutions' observing non-standard holidays, to the extent operationally feasible, Reserve Banks will defer debiting or crediting originators of ACH transactions that are destined for institutions that will be observing a non-standard holiday on the settlement date. The value of any remaining non-standard holiday float will be recovered under the fee schedule.

Residual ACH Float—The remainder of ACH float, approximately 15 percent, amounting to about $11 million, is due to Reserve Bank operating procedures, processing or intraterritory transportation delays, and reserve adjustments. Because this float can be reduced substantially through operational improvements, it was proposed that operational improvements be implemented during 1984 and that

[6] Originators of debit transactions are receivers of funds and their accounts are credited on settlement date. If the receiving depository institution's reserve or clearing account is not debited on the settlement date, debit float is generated. Originators of credit transactions are payors of funds and their accounts are debited on settlement date. If the receiving depository institution's reserve of clearing account is not credited on the settlement date, credit float is generated.

[7] Using a 9.5 percent Federal funds rate, the value of this float amounts to $655,000.

any residual float that cannot be eliminated be included in the ACH cost base the next time ACH fees are set. One respondent suggested that delaying the pricing of residual ACH float created a competitive advantage for the Federal Reserve.

Because much of this float results from operational inefficiencies inherent in the current ACH software that will be corrected when the ACH–84 software is implemented later this year, this float will not be included in the ACH cost base until operational improvements can be realized. Since the majority of ACH float will either be included in the 1984 ACH cost base or be eliminated, this procedure does not create a competitive advantage for the Federal Reserve.

Proposed Service Enhancements

Based on a review of the current features of the ACH service, several service enhancements were identified. It as proposed to: (1) Offer several alternative levels of telephone advice services to depository institutions for items deposited at the night time deposit deadline that cannot be delivered on the settlement date; (2) offer depository institutions lower prices and/or later deadlines for deposits that are presorted by receiving Federal Reserve District and are delivered either to the local Federal Reserve office or the Federal Reserve office serving the receiving institution(s); and (3) conduct an analysis of offering same-day settlement for ACH transactions, expanding the ACH value-dating concept or providing a warehousing service, modifying the ACH to serve as a mechanism to facilitate interbank clearing and settlement of electronic payments, converting ACH paper return items to automated form at the Federal Reserve office of first receipt, and offering a separate ACH return item service.

With respect to the proposed service enhancements, the commenters offered many suggestions and raised numerous issues. At this time, only the telephone advice service and the presorted deposit option can be implemented in conjunction with the revised ACH fee schedule. Before considering whether the other proposed service enhancements should be offered, a complete analysis of their potential impact on the ACH service will be conducted.

Telephone Advice Service—In conjunction with implementing the revised ACH fee schedule, it was proposed that the following alternative telephone advice services be offered to depository institutions: (1) Advice of ACH settlement totals; (2) advice of all debit transactions; (3) advice of debit transactions above a specified dollar amount;[8] (4) advice of all credit transactions; (5) advice of credit transactions above a specified dollar amount; (6) advice of next-day settlement credit transactions only; or (7) a combination of these alternatives selected by a depository institution. In providing these services, the Reserve Banks would provide sufficient information about transactions so that depository institutions would be able to post the transactions to their customers' accounts. This proposal was supported by the majority of respondents that discussed it.

Because ACH transactions processed at night cannot be delivered to remotely located institutions via ground transportation by the settlement date, the proposed telephone advice services will be made available to depository institutions by all Reserve Banks where there is a demand for such services beginning march 29, 1984.

Presorted Deposit Option—Currently, Federal Reserve offices accept only mixed, or unsorted, ACH deposits. Since a number of depository institutions possess the capability to sort ACH transactions and are believed to be interested in reducing the costs associated with participating in the ACH, a presorted deposit option was proposed. Under this option, ACH originators would be permitted to deposit transactions sorted by receiving Federal Reserve office with their local Reserve office or to deliver presorted deposits directly to the receiving Reserve office.

A majority of commenters supported the Federal Reserve's offering a presorted deposit option, indicating that this proposal was a positive step for improving the efficiency of the ACH mechanism. Several commenters, however, noted that deposit deadlines were not identical at all Federal Reserve offices.

Since the presorted deposit option offers originators of ACH transactions a meaningful way to reduce costs or to benefit from later deposit deadlines and should contribute to ACH volume growth, the Reserve Banks will begin offering the presorted deposit option on March 29, 1984. In addition, each Federal Reserve office will make a schedule of all ACH deposit deadlines available to originating institutions that desire the schedules.

Cost, Volume, and Revenue Projections

Based on preliminary data, during 1983, total recoverable commercial ACH costs, including the PSAF, amounted to $6.2 million. Total revenues amounted to $6.6 million, resulting in a net revenue surplus of $400 thousand. These results compare favorably with the projections that were used in setting the current ACH fees. Specifically, the Reserve Banks projected that recoverable commercial ACH costs would amount to $5.7 million and that total revenues would amount to $6.0 million. The primary reason for the differences in both commercial ACH costs and revenue was the fact that commercial ACH volume exceeded projections. The Reserve Banks estimated that commercial ACH volume would amount to 151 million transactions. Preliminary volume data indicate that approximately 156 million commercial ACH transactions were processed during 1983.

The Reserve Banks project that recoverable commercial ACH costs, including the PSAF and the float that will be included in the cost base, will amount to $10.6 million during 1984. Based on the recommended ACH fee schedule, revenues are expected to amount to $11.1 million, resulting in a net revenue surplus of $500 thousand.

The increase in costs reflects the change from a 40 percent to a 60 percent recovery rate, the inclusion of ACH float in the cost base for the first time, as well as a slight increase in the proportion of commercial ACH volume to total ACH volume. During 1983, commercial ACH transactions constituted approximately 39 percent of total ACH volume. In 1984, commercial ACH volume is expected to reach a level of 187.8 million transactions to account for nearly 42 percent of the estimated 452.4 million government and commercial ACH transactions.

By order of the Board of Governors of the Federal Reserve System, February 15, 1984.

William W. Wiles,

Secretary of the Board.

[8] A specific dollar amount will be determined jointly by representatives of the Federal Reserve and each depository institution.

[FR Doc. 84–4598 Filed 2–21–84; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 76N-0465; DESI 64]

Human Drugs; Certain Barbiturate-Analgesic Oral Combination Drugs; Drugs for Human Use; Drug Efficacy Study Implementation; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the previous marketing requirements for certain butalbital-analgesic drug products containing acetaminophen by deleting the requirement for the submission of clinical studies and allowing for the submission of abbreviated new drug applications (ANDA's).

DATE: Manufacturers of such products who do not hold either an approved abbreviated new drug application or supplemental new drug application by August 10, 1984, will be subject to regulatory action.

ADDRESSES: Communications in response to this notice should be identified with reference number DESI 64, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Neuropharmacological Drug Products (HFN-120), National Center for Drugs and Biologics.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), National Center for Drugs and Biologics.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFN-530), National Center for Drugs and Biologics.

Requests for guidelines or information on conducting dissolution tests and bioavailability studies: Division of Biopharmaceutics (HFN-520), National Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 10, 1982 (47 FR 34634), FDA announced its effectiveness classification and conditions for approval and marketing of the following combination drug products with or without caffeine (40 milligrams (mg)): (1) Butalbital (50 mg) and acetaminophen (325 or 650 mg); (2) butalbital (50 mg), aspirin (160 to 165 mg), and acetaminophen (160 to 165 mg) formulated so that the total amount of aspirin and acetaminophen equals 325 mg; and (3) butalbital (50 mg), aspirin (325 mg), and acetaminophen (325 mg). These conditions required the submission of full new drug applications containing clinical studies showing that the combination drug product did not cause hepatic injury. In a later notice published in the **Federal Register** of August 12, 1983 (48 FR 36655), FDA postponed implementation of the August 10, 1982 notice insofar as it applied to these products. FDA took this action because reports from the scientific literature were submitted to the agency to support the contention that additional studies were unnecessary to evaluate the potential risks of the butalbital-acetaminophen combination product.

FDA has reviewed the information submitted and has concluded that clinical trials to evaluate the potential hepatic toxicity of butalbital-containing acetaminophen combination products are unnecessary.

FDA's requirement for clinical trials to evaluate the potential of butalbital-acetaminophen products to cause hepatic injury was based on the assumption that butalbital, in common with many other members of the barbiturate drug class, possessed the capacity to cause a substantial net increase in the activity of hepatic cytochrome P-450. A net increase in the activity of this hepatic enzyme system raised the possibility that the metabolism of acetaminophen might, in turn, be significantly altered, leading to the increased formation of hepatotoxic acetaminophen metabolites.

The information submitted documents that butalbital, an allyl-substituted barbiturate, is a much less potent net activator of animal hepatic cytochrome P-450 than non-allyl substituted barbiturates (i.e., phenobarbital). Although allyl-substituted barbiturates induce the formation of new hepatic microsomal enzyme protein, they react irreversibly with newly formed enzyme inhibiting enzymatic activity. Evidence from rat studies demonstrates that allyl barbiturates can depress hepatic cytochrome P-450 activity within one hour of oral dosing and that chronic oral dosing for 3 weeks does not result in an increase in hepatic cytochrome P-450 activity above the level of untreated controls. (Refs. 1, 2, 3 and 4). This information provides one reason for concluding that clinical trails of the butalbital acetaminophen combination are not needed.

There is a second basis for concluding trials would not be useful or informative. The toxic mechanism of acetaminophen is well-documented and the metabolism of acetaminophen has been studied extensively. Hepatotoxicity in toxic overdose is currently ascribed to the accumulation of an unstable toxic intermediate formed by the P-450 enzyme system. The effects of induction of the liver cytochrome P-450 enzyme system is to increase, to a varying extent, the formation of this toxic intermediate, reflected by increase of mercapturic acid in the urine. Studies have shown that in man, phenobarbital, a known P-450 inducer, can increase the measured urinary mercapturic acid by approximately 50 percent. Butalbital should, if anything, produce a smaller increase. The dose of acetaminophen necessary to produce liver toxicity has been estimated to be about 15 grams. Taking a conservative estimate of 10 grams as representing a potential risk, it can be inferred that at least 5 grams of acetaminophen plus phenobarbital would be necessary to produce liver injury. (Ref. 5). As the maximum daily recommended dose of acetaminophen in butalbital acetaminophen combinations is 1,950 milligrams, and as butalbital is unlikely to cause any net activation of hepatic cytochrome P-450, a clinical study employing any of the combination products at the doses recommended in their labeling, or at reasonable multiples (i.e., one or two fold) of these doses, could not reasonably be expected to cause acetaminophen mediated hepatotoxicity. It is, therefore, imprudent to require such a study as it would be unable to provide any information about the subject of interest: cytochrome P-450 mediated enhancement of acetaminophen toxicity.

References

The following information has been placed on display at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Abbritti, G. and F. De Matteis, "Decreased Levels of Cytochrome P-450 and Catalase in Hepatic Porphyria Caused by Substituted Acetamides and Barbiturates: Importance of the Allyl Group in the Molecule of the Active Drugs," *Chemical-Biological Interactions*, 4:281-286, 1971-1972.

2. Levin, W., E. Sernatinger, M. Jacobson, and R. Kuntzman, "Destruction of Cytochrome P-450 by Secobarbital and Other Barbiturates Containing Allyl Groups," *Science*, 176:1341-1343, 1972.

3. Ortiz de Montellano, P. R. and M. A. Correia, "Suicidal Destruction of Cytochrome P-450 during Oxidative Drug Metabolism," *Annual Review of Pharmacology and Toxicology*, 23:481-503, 1983.

4. Levin W., M. Jacobson, E. Sernatinger, and R. Kuntzman, "Breakdown of Cytochrome P-450 Heme by Secobarbital and Other Allyl-Containing Barbiturates," *Drug Metabolism and Disposition*, 1:275-284, 1973.

5. Mitchell, J. R., S. S. Thorgeirsson, W. Z. Potter, D. J. Jollow, and H. Keiser, "Acetaminophen-Induced Hepatic Injury: Protective Role of Glutathione in Man and Rationale for Therapy," *Clinical Pharmacology Therapeutics*, 16:676-684, 1974.

On the basis of this information, the Director of the National Center for Drugs and Biologics has determined that the August 10, 1982 **Federal Register** notice should be amended to delete the requirement of clinical studies for these drug products and to allow for the submission of ANDA's for these drug products. The August 12, 1983 notice stated that FDA received a petition on behalf of several drug firms that requested an extension of time for complying with the August 10, 1982 requirements. Because these requirements are no longer in effect and ANDA's are acceptable, this petition is made moot by this notice.

Therefore, for the reasons stated above, the August 10, 1982 notice is superseded by this notice insofar as the 1982 notice pertains to products that contain butalbital and acetaminophen or butalbital, acetaminophen, and aspirin, with or without caffeine. The marketing conditions for drug products containing butalbital and aspirin, with or without caffeine, are unchanged from the conditions stated in the notice of August 10, 1982 and are not affected by this notice.

Amendment

Drug products containing butalbital and acetaminophen, with or without other ingredients, are regarded as new drugs (21 U.S.C. 321(p)). An approved new drug application is a requirement for marketing such drug products.

A. *Effectiveness classification.* FDA has considered all available evidence and concludes that the following combination products, with or without caffeine (40 mg), are effective for the symptom complex of tension (or muscle contraction) headache: (1) Butalbital (50 mg) and acetaminophen (325 or 650 mg); (2) butalbital (50 mg), aspirin (160 to 165 mg), and acetaminophen (160 to 165 mg) formulated so that the total amount of aspirin and acetaminophen equals 325 mg; and (3) butalbital (50 mg), aspirin (325 mg), and acetaminophen (325 mg).

B. *Conditions for approval and marketing.* FDA is prepared to approve abbreviated new drug applications and supplements to previously approved new drug applications under the conditions described herein.

1. *Form of drug.* The drug is in tablet or capsule form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the Federal Food, Drug, and Cosmetic Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indication is as follows:

For the relief of the symptom complex of tension (or muscle contraction) headache.

3. *Marketing status.* a. Approval of an abbreviated new drug application (21 CFR 314.2) or a supplement to an approved application must be obtained for a drug product described in paragraph A of this notice no later than August 10, 1984. Any product on the market after that date without approval will be subject to regulatory action.

b. In vitro dissolution rate studies will be required in each application or supplement. These studies are to be conducted in accordance with the methods provided for in the guidelines on conducting dissolution tests and bioavailability studies, which are available from the Division of Biopharmaceutics (HFN-520) at the address given above. In vivo demonstration of bioavailability shall be required of all products that fail to achieve adequate dissolution.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053 as amended (21 U.S.C. 352, 355)) and under authority delegated to the Director of the National Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: February 14, 1984.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 84-4569 Filed 2-16-84; 10:31 am]

BILLING CODE 4160-01-M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Device Good Manufacturing Practice Advisory Committee

Date, time, and place. March 29 and 30, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, March 29, 9 a.m., to 12 p.m.; open committee discussion, 1 p.m. to 3:30 p.m.; open committee discussion, March 30, 9 a.m. to 3:30 p.m.; Lincoln Gluscevich, National Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8175. If all committee business is completed on March 29, the session on March 30 will be cancelled.

General function of the committee. The committee reviews regulations and/or guidelines regarding current good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, as well as any petition submitted by a manufacturer for an exemption or variance from current good manufacturing practice (CGMP) regulations applicable to medical devices.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 2, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the draft guideline entitled "Guideline on General Principles of Process Validation," which

was announced in the **Federal Register** of March 29, 1983 (48 FR 13096), and made available for public comment. An FDA speaker will discuss the comments received on the draft guideline and proposed revisions under consideration by the agency. A transcript of the discussion on this matter will become part of the Administrative record (82D-0350). In addition, the CGMP evaluation report describing recent inspectional findings will be discussed along with the revised 1983 CGMP Compliance Program. An update of sterilization issues will be provided and plans for future committee activities will be considered.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) and open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: February 15, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-4592 Filed 2-21-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83N-0415]

Arkansas Department of Correction; Opportunity for Hearing on Intent To Revoke U.S. License No. 477

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is giving notice of opportunity for hearing on a proposal to revoke the establishment license (U.S. License No. 477) and product license issued to the Arkansas Department of Correction for the manufacture of Source Plasma (Human). The proposed revocation is based on significant noncompliance with certain provisions of the biologics regulations specified in this document.

DATES: The firm may submit a written request for a hearing by March 23, 1984, and any data justifying a hearing must be submitted by April 23, 1984. Other interested persons may submit comments on the proposed revocation by April 23, 1984.

ADDRESS: Written requests for hearing, data, and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, National Center for Drugs and Biologics (HFN-813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: FDA is proposing to revoke the establishment license (U.S. License No. 477) and product license issued to the Arkansas Department of Correction for the manufacture of Source Plasma (Human). The Arkansas Department of Correction is headquartered at Pine Bluff, AR, with the plasma center establishment located at Grady, AR. The plasmapheresis establishment is managed and operated under contract by Health Management Association, Inc. (HMA), 120 South Walnut St., Pine Bluff, AR. The responsible head and other managerial staff of the establishment are employees of HMA. FDA is basing the proposed revocation on: (1) The continued maintenance and use of inaccurate and incomplete records relating to the collection, processing, and storage of Source Plasma (Human); (2) instances of intentional and willful disregard for prescribed standards; and (3) the apparent inadequate training and ineffective supervision of the plasma center staff.

On February 11, 12, 14, and 28, and March 1, 1983, FDA inspected the Arkansas Department of Correction's plasma center, revealing significant deviations from current good manufacturing practices for blood and blood components (21 CFR Parts 606 and 640). The deviations included, but were not limited to, the following:

1. On four separate occasions, an FDA investigator observed an employee recording responses to medical history questions which had not been asked of the prospective donor (21 CFR 606.100(b)(1) and 640.63(a));

2. The establishment failed to assure that no more than the maximum permissible amount of whole blood was collected from donors; during three separate 2-day periods, overbleeding was noted for approximately 10 percent of the units of blood drawn (21 CFR 640.65(b)(6));

3. Employees failed to follow standard operating procedure (SOP) instructions concerning the observation of plasma bags for leakage and the procedures to follow should leakage occur, nor did employees appear to be aware of such procedures (21 CFR 606.100(a) and 640.69(a));

4. The establishment failed to assure the clean and orderly storage of blood and plasma products to prevent contamination; the quarantine freezer used to store units of plasma reactive for hepatitis B surface antigen (HBsAg) had frozen plasma at the bottom of the freezer, indicating thawing and leakage of plasma (21 CFR 606.40(a) (6) and (7));

5. Container labels for plasma units held in quarantine storage provided no indication that the units had been found reactive when tested for HBsAg or to a serologic test for syphilis (21 CFR 606.120(b)(6)); and

6. FDA concluded that many of the violations, particularly items 1, 2, and 3 cited above, were indicative of inadequate training and ineffective supervision of the plasma center staff, in violation of 21 CFR 606.20 (a) and (b).

On May 10, 1983, FDA issued a Regulatory Letter to the establishment, based on the significance of the deviations noted. On June 16, 1983, before FDA could conduct a scheduled followup inspection, the responsible head of the establishment informed FDA that the new manager had discovered significant ongoing problems related to the collection of plasma from unsuitable donors. Specifically, the establishment had collected at least 30 units of Source Plasma (Human) from donors with a history of a reactive test result for HBsAg and the units had been distributed for further manufacturing. By letter of July 1, 1983, the responsible head informed FDA that the plasma center would be closed temporarily.

Subsequently, FDA's continuing investigation of the plasma center's operations revealed the following additional serious deviations from the biologics regulations that occurred over an extended period of time: (1) Individuals known to have been disqualified previously as plasma donors due to a reactive test for HBsAg were reinstated into the program and their plasma shipped for further manufacture (21 CFR 610.41); (2) records of hepatitis test results and plasma storage and shipment were inaccurate or incomplete (21 CFR 606.160(b)(1)(ii), (2)(i), and (3)); (3) records and files relevant to donor suitability and laboratory analysis had been altered to conceal the fact that donors had been disqualified previously for a variety of medical reasons, including a history of hepatitis or having exhibited signs relating to hepatitis, such as jaundice, (21 CFR 606.160(a)(1)); and (4) storage temperature charts had been fabricated to conceal the fact that plasma storage temperatures rose higher than those prescribed by regulations (21 CFR 606.160(b)(3)(iii) and 640.69(b)). Statements from current and former staff of the plasma center revealed that individuals formerly employed in management positions at the plasma center either had initiated or condoned the destruction or alteration of records concerning these activities and had acted to conceal these deviations from FDA.

By letter dated August 5, 1983, issued under § 601.6 (21 CFR 601.6), FDA suspended U.S. License No. 477 and the product license for Source Plasma (Human) issued to the Arkansas Department of Correction. The letter detailed the ground for suspension and instructed the establishment, among other things, to cease collecting and shipping Source Plasma (Human) until otherwise notified and to notify in writing the National Center for Drugs and Biologics, FDA, of the specific actions taken to correct all of the deviations noted. The letter also offered the establishment the opportunity to request that license revocation be held in abeyance pending resolution of the matters involved.

By a letter dated August 15, 1983, the establishment requested that the revocation be held in abeyance and promised corrective action. In considering the request, FDA conducted a comprehensive review of the investigational findings and the establishment's inspectional history. FDA found that the establishment has demonstrated continued noncompliance with those requirements designed to assure the safety, purity, identity, and quality of plasma, as well as the requirements for donor protection which are intended to assure a healthy donor population and that the significant deviations involved management staff as well as other employees. In summary, FDA found that these actions represent significant and continued noncompliance with the applicable standards in Title 21 of the Code of Federal Regulations and significant noncompliance with the provisions of the establishment's license for Source Plasma (Human). Furthermore, FDA found that a number of these actions represent an intentional and willful disregard of the prescribed standards. Therefore, FDA initiated revocation proceedings without providing the establishment further opportunity to achieve compliance.

Accordingly, in a letter dated September 16, 1983, issued under § 601.5(b) (21 CFR 601.5(b)), FDA provided the Arkansas Department of Correction and its responsible head notice of the agency's intent to revoke U.S. License No. 477 and to issue a notice of opportunity for a hearing. In a telephone conversation of October 25, 1983, the establishment, through its attorney, declined to waive the opportunity for a hearing. Accordingly, FDA is now issuing a notice of opportunity for hearing on the matter under § 12.21(b) (21 CFR 12.21(b)).

Copies of the List of Observations, Form 483, resulting from the inspection of February and March 1983; the Regulatory Letter of May 10, 1983; the letter dated August 5, 1983 in which FDA detailed the grounds for suspension; the establishment's letter dated August 15, 1983, in response to the suspension; and FDA's letter of September 16, 1983, setting forth the notice and intent to revoke U.S. License No. 477; are on file at the Dockets Management Branch (address above).

The Commissioner of Food and Drugs is offering an opportunity for a hearing under § 12.21(a) on the proposed revocation of the establishment license (U.S. License No. 477) and product license issued to the Arkansas Department of Correction for the manufacture of Source Plasma (Human). The establishment may submit a written request for a hearing to the Dockets Management Branch by March 23, 1984, and any data justifying a hearing must be submitted by April 23, 1984. Other interested persons may submit comments on the proposed revocation to the Dockets Management Branch by April 23, 1984. The failure of a licensee to file timely written appearance and request for a hearing constitutes an election of the licensee not to avail itself of the opportunity of a hearing concerning the proposed license revocation.

FDA's procedures and requirements governing a notice of opportunity for hearing, notice of appearance and request for hearing, grant or denial of hearing, and submission of data and information to justify a hearing are contained in 21 CFR Parts 12 and 601 and 21 CFR 314.200. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the revocation of the license, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the licensee requesting the hearing, making findings and conclusions that justify denying a hearing.

Two copies of any submissions are to be provided to FDA except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from pubic disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 505, 701, 52 Stat.

1040–1042 as amended 1050–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 351, 352, 355, 371).)

Dated: February 15, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-4591 Filed 2-21-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0012]

Thiabendazole for Use in Pheasants; Availability of Data

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of safety, effectiveness, and environmental data to be used in support of a new animal drug application (NADA) for use of thiabendazole in pheasant feed. The data, contained in Public Master File (PMF) 3857, were compiled under Interregional Research Project No. 4 (IR–4), a national agricultural program for obtaining clearances for use of agricultural products for minor or special uses.

ADDRESS: Submit NADA's to Document Control Section (HFV–16), Bureau of Veterinary Medicine, Food and Drug Administration, Rm. 6B–45, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: The uses of thiabendazole in animal feed are new animal drug uses under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)), and as such are subject to section 512 of the act (21 U.S.C. 360b) requiring that the uses be the subject of an approved NADA. Rutgers University, IR–4 Project, Cook College, New Brunswick, NJ 08903, has provided data and information to demonstrate effectiveness and safety to the target animal for use of thiabendazole for the treatment of gapeworms, *Syngamus trachea*, in pheasants when administered in a complete pheasant feed. The Bureau of Veterinary Medicine has provided an environmental assessment of the proposed use. The data and information are contained in PMF 3857. Sponsors of NADA's or supplemental NADA's may reference without further authorization the public master file to support approval. An NADA or supplemental NADA should include, in addition to a reference to the master file, drug labeling and other information needed for approval, such as data concerning human food safety; manufacturing methods; facilities and controls; and information addressing the potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact the individual named above.

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

Dated: February 15, 1984.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-4593 Filed 2-21-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program; Availability of Draft Report of Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation

Notice is hereby given that the draft report of the Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation, National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, is available. Public review and comment is encouraged. In order for comments to be considered by the Panel, they must be received by close of business March 30, 1984. Persons currently on the Panel mailing list will automatically be sent the draft report and need not request a copy. All requests for a copy of the draft report should be addressed to the Panel Secretary, Ms. Riley, at the address below:

Dr. John Doull, Chairperson, Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation, c/o Ms. Janet Riley, Secretary to the Panel, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7621 or FTS 629–7621.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 84-4614 Filed 2-21-84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[C-3-84]

California; Filing of Plat of Survey

January 31, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, El Dorado County

T. 11 N., R. 10 E.

2. This supplemental plat of the NE¼ Section 12, T. 11 N., R. 10 E. Mount Diablo Meridian, California, was accepted January 17, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84-4668 Filed 2-21-84; 8:45 am]

BILLING CODE 4310-40-M

[C-4-84]

California; Filing of Plat of Survey

January 31, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Mariposa County

T. 4 S., R. 16 E.

2. This supplement plat of section 10, T. 4 S., R. 16 E., Mount Diablo Meridian, California, was accepted January 19, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management,

Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84–4667 Filed 2–21–84; 8:45 am]

BILLING CODE 4310–01–M

[C–5–84]

California; Filing of Plat of Survey

January 31, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Mariposa County

T. 4 S., R. 18 E.

2. This supplemental plat of section 27, T. 4 S., R. 18 E., Mount Diablo Meridian, California, was accepted January 17, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge

Chief, Records and Information Section.

[FR Doc. 84–4665 Filed 2–21–84; 8:45 am]

BILLING CODE 4310–40–M

[C–6–84]

California; Filing of Plat of Survey

January 31, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Lassen County

T. 28 N., R. 11 E.

2. This supplemental plat of the NW¼ section 29, T. 28 N., R. 11 E., Mount Diablo Meridian, California, was accepted January 17, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84–4666 Filed 2–21–84; 8:45 am]

BILLING CODE 4310–40–M

[I–19856]

Idaho; Airport Lease

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214) Joseph R. Schank, Jr., has applied for an airport lease for the following land:

Boise Meridian, Idaho

T. 6 S., R. 5 E.,
sec. 33, W½SW¼
T. 7 S., R. 5 E.,
sec. 4, Lot 3, 4, S½NW¼

The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho. 83705.

David Brunner,

Associate District Manager, Boise District Office.

February 13, 1984.

[FR Doc. 84–4669 Filed 2–21–84; 8:45 am]

BILLING CODE 4310–84–M

Geological Survey

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for Interior, Telephone: 202–395–7340.

Title: Inventory of Hydrologic Data Acquisition.

Bureau Form Number: A–1.

Frequency: Annual.

Description of Respondents: Federal, State, and local agencies and an occasional contractor.

Annual Responses: 185 entities—1,500 new forms and updates.

Annual Burden Hours: 365.

Bureau Clearance Officer: Geraldine A. Wilson 703–860–7211.

Dated: February 1, 1984.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 84–4655 Filed 2–21–84; 8:45 am]

BILLING CODE 4310–31–M

Minerals Management Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related materials may be obtained by contacting Shirley Vaughn at (703) 860–7564. Comments and suggestions on the collection of information should be made directly to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Office of Management and Budget, Washington, D.C. 20503; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; U.S. Department of the Interior; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Quarterly Oil Well Test Report.

Bureau Form Number: MMS–1869.

Frequency: Quarterly.

Description of Respondents: Federal oil and gas lessees performing offshore operations under OCS Order No. 11, "Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights"; 30 CFR 250.16, Well potentials and permissible flow; and 30 CFR 250.39, Tests, surveys, and samples.

Annual Responses: 8,400.

Annual Burden Hours: 16,800.

Dated: February 6, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 84-4616 Filed 2-21-84; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 1, 1984, a proposed consent decree in *United States* v. *Maine Metal Finishing Company, Inc.*, C.A. No. 83-0071 P (D. Me.) was lodged with the United States District Court for the District of Maine. The proposed consent decree requires Maine Metal Finishing Company, Inc. of Gorham, Maine to pay a civil penalty, and either to comply with final effluent limitations to be established pursuant to an NPDES permit and interim effluent limitations at the Gorham facility, or to relocate its facility to Westbrook, Maine and to comply with pretreatment regulations for the publicly-owned treatment works (POTW) servicing Westbrook.

The Department of Justice will receive comments for a period of thirty (30) days from the date of this publication relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Maine Metal Finishing Company, Inc.*, D.J. Ref. 90-5-1-1-1887.

The proposed consent decree may be examined at the office of the United States Attorney, 156 Federal Street, Portland, Maine, at the Region I Office of the Environmental Protection Agency, JFK Federal Building, Boston, Massachusetts and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the proposed consent decree, refer to the case, proposed consent decree and D.J. reference number, and include a check payable to the United States Treasury in the amount of $1.70 ($0.10 per page reproduction charge).

F. Henry Habicht,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-4615 Filed 2-21-84; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 82-23]

Samuel Fertig, M.D.; Denial of Application

On September 15, 1982, the then-Acting Administrator of the Drug Enforcement Administration (DEA) directed an Order to Show Cause to Samuel Fertig, M.D. (Respondent) 434 W. Broadway, Cedarhurst, New York 11516, seeking to deny an application for registration under 21 U.S.C. 823 executed by Respondent on December 7, 1981. The statutory predicate for the Order to Show Cause under 21 U.S.C. 824(a)(2) was the conviction of Dr. Fertig on June 23, 1978, in the United States District Court for the Eastern District of New York of eight counts of distribution of controlled substances in violation of 21 U.S.C. 841(a)(1), a felony conviction relating to controlled substances. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause.

The first session of the hearing was held March 3, 1983, in New York City. Administrative Law Judge Francis L. Young presided. During the presentation of the Government's case, Respondent complained of chest pains and requested that the hearing be postponed. Judge Young granted this request after the completion of the testimony of the Government's first witness. The second hearing session was held November 8, 1983, in Washington, D.C. before Judge Young.

At that session neither Respondent nor anyone purporting to represent him appeared. Judge Young permitted the Government to present its case for the record. At the close of the Government's case, Judge Young granted a motion made by Government counsel to find that Respondent waived his opportunity for a hearing under 21 CFR 1301.54, and that the proceedings before the Administrative Law Judge be terminated. Judge Young granted this motion and terminated the proceedings before him. Accordingly, the Administrator finds that Respondent has waived his opportunity for a hearing and enters this final order based upon the record as presented by the Government at the two hearing sessions. 21 CFR 1316.67.

Diversion Investigator (DI) Sean Mahoney testified for the Government at the first hearing. DI Mahoney has been employed by DEA or its predecessor agency since 1970. He testified that Dr. Fertig first came to the attention of the DEA office in New York in 1973. During regular inventory investigations of pharmacies in the New York metropolitan area, many pharmacies had prescriptions for Schedule II controlled substances written by Dr. Fertig. These prescriptions were found in New York City and Nassau and Suffolk Counties on Long Island as well as Rockland and Westchester Counties. At about the same time, DEA began receiving numerous citizen complaints concerning Respondent's controlled substance prescribing habits. DEA was not the only recipient of these complaints. Complaints were directed to the New York City Police Department, the King's County Medical Society, the New York State Bureau of Narcotic Enforcement and the Nassau County Police Department. Most of these complaints came from parents who complained that their sons and daughters were obtaining controlled substances from Dr. Fertig. At one time in 1973, Dr. Fertig was the most complained about individual in New York City. New York State law requires that all Schedule II prescriptions be written on a triplicate prescription form. The practitioner writes the prescription and gives two copies to the patient, retaining one copy. The patient gives two copies to the pharmacy, who sends one copy to the Bureau of Prescription Analysis in Albany and retains one copy. In 1976, when the average New York State practitioner would use between 40 and 45 triplicate prescriptions per year, Dr. Fertig ordered 2,300 such prescriptions.

In the summer of 1977, the Nassau County Prescription Squad contacted DEA concerning Respondent. The Nassau squad had just arrested one Kenny Suarez for passing a forged prescription in Nassau County. Mr. Suarez indicated that he was willing to help law enforcement in its investigation of Dr. Fertig. Mr. Suarez indicated that Dr. Fertig was selling numerous prescriptions for controlled substances at the rate of three prescriptions for $20. Mr. Suarez indicated that Dr. Fertig sold these prescriptions to people using a variety of names, in any number of names the individuals requested. The most typical combination was for a prescription for Tuinal, at that time in Schedule III under New York law; Valium; and Fastin. Mr. Suarez indicated that Dr. Fertig was very

concerned about where the prescriptions were being filled. He suggested various neighborhoods in New York City or its suburbs in which to fill the prescriptions and objected to other neighborhoods.

Continuing his investigation of Respondent, DI Mahoney interviewed the parents of a young man who was obtaining prescriptions from Dr. Fertig on a regular basis. This couple related that during a five-day period in September, 1977, their son overdosed on Tuinal and Valium four times. In August, 1977, after obtaining a prescription for Valium from Respondent, the young man went to a pharmacy, filled the prescription, consumed 10 Valium, drank some whiskey, went berserk and stabbed his father. On another occasion the young man consumed 28 Tuinal of a vial of 30 in one day and overdosed on an airplane to Florida. DI Mahoney also interviewed the mother of a young woman who had been obtaining controlled substances from Dr. Fertig. The mother related a similar story, describing how her daughter, who had been an honor student, became heavily involved in drugs and regularly obtained prescriptions from Respondent. The mother's complaint to the King's County Medical Society was forwarded from the medical society to the New York Bureau of Narcotic Enforcement.

DI Mahoney also spoke to the administrators of Daytop Village, a drug treatment program that were seeing many "patients" of Dr. Fertig. Most of these patients were young people addicted to barbiturates, such as Tuinal. In a break with their usual practice, the administrators of Daytop Village were willing to work closely with law enforcement in bringing Dr. Fertig to justice. DI Mahoney also conducted two other interviews with parents, including the parents of one young man who died of an overdose of Tuinal and whiskey. An informant told DI Mahoney and Special Agent Alfred Cavuto that, like Kenny Suarez, he was able to obtain three prescriptions at a time for Tuinal, Fastin and Valium for $20. He was also able to obtain triplicate prescriptions for $50. During this time, the New York Bureau of Narcotic Enforcement, the City of New York Police and the DEA were all conducting investigations of Respondent.

SA Cavuto testified at the hearing in Washington, D.C. On August 1, 1977, he proceeded to Dr. Fertig's office at 1777 Ocean Parkway, Brooklyn, New York in an undercover capacity. The waiting room was filled with people in their late teens and early twenties waiting to see Respondent. A "bouncer" by the name of Rick kept order in Respondent's office. Kenny Suarez had earlier related to DI Mahoney that the bouncer was armed and carried an ankle holster. SA Cavuto testified that one woman appeared to be under the influence of drugs at the time. SA Cavuto was accompanied by Kenny Suarez and his wife, Kathy. The three individuals used the name "Demko". Respondent wrote a prescription for Agent Cavuto in the name Demko for Tuinal, one for Valium, and indicated that he would write a prescription for either Fastin or Ionamin. SA Cavuto indicated that he would try the Ionamin, and Dr. Fertig wrote a prescription for those three drugs for each of the three individuals. Respondent wanted to know where they would take the prescriptions to have them filled and Agent Cavuto indicated that he knew a pharmacy in Queens, New York. Dr. Fertig indicated that he would prefer to see the prescription go elsewhere. At no time did Respondent conduct a physical examination.

Similarly, on August 9, 1977, SA Cavuto and the Suarez couple visited Respondent's office. SA Cavuto gave the bouncer $10 to move him and the Suarez couple to the head of the line since the office was crowded. The three used different names than they had used eight days earlier. Respondent again wrote three prescriptions for each individual, one prescription each for Valium, Tuinal and either Ionamin or Fastin. Respondent advised them not to get the prescriptions filled near his office.

On September 8, 1977, the line at Respondent's office was so long that they could not get in to see the doctor. The three of them waited approximately eight hours. On September 20, 1977, they had to wait approximately six hours to see Respondent. On both occasions there were young people milling around, others smoking marijuana, and people discussing the ease with which Respondent would write prescriptions for controlled substances and the difficulties in getting those prescriptions filled. Again, Respondent wrote prescriptions for Valium, Tuinal and either Fastin or Ionamin for each of the three people. Again, Respondent asked where they were getting the prescriptions filled, advising them to stay out of Ozone Park, Queens because it was "to hot". On September 22, 1977, the line was again too long to wait to see Respondent.

On November 29, 1977, Agent Cavuto visited Respondent's office with another informant who frequently obtained controlled substance prescriptions from Dr. Fertig. This was the informant about whom DI Mahoney testified. When the informant got in to see Respondent, Respondent chastised him for fainting in an apparent drug overdose the day before. Dr. Fertig said "if you o.d.'d once you will o.d. again. That means you can't hold it. I can't take care of you". Respondent then made up new patient cards for the informant and asked the informant what he wanted. the informant informed Respondent that he wanted prescriptions for himself and his wife, and Respondent wrote prescriptions for Tuinal, lotusate, Valium and either Fastin or Ionamin in the name of informant and his wife. Respondent also wrote prescriptions for Valium, Tuinal and either Fastin or Ionamin for SA Cavuto. SA Cavuto then asked for prescriptions for his girl friend who couldn't make it on that day and Respondent wrote prescriptions for Tuinal, Valium and either Fastin or Ionamin For SA Cavuto's "girl friend".

SA Edward Guillen testified for Government at the hearing in November, 1983. While operating in an undercover capacity, he proceeded to Respondent's office on December 6, 1977. SA Guillen used the name of Edward Suarez and told Respondent that he wanted prescriptions for Valium, Tuinal and Ionoamin. SA Guillen told Respondent that he had been earlier that summer although he had never been there. Respondent looked for a patient card and finding none, made out a new card. SA Guillen also told Respondent he was interested in obtaining prescriptions for his girl friend, Maria Garcia, and his sister, Carmen Suarez. Respondent made out patient cards in those names and wrote prescriptions for Valium, Tuinal and Ionamin in each of the three names. Respondent also indicated that Spanish Harlem was a safe neighborhood to get the prescriptions filled. SA Cavuto then entered the room, and indicated to Respondent that he wanted prescriptions for Valium, Tuinal and Ionamin for himself, a girl friend and his brother. Respondent wrote prescriptions in the names supplied by SA Cavuto.

SA Guillen has conducted surveillance on September 20, 1977, when SA Cavuto visited Respondent's office. SA Guillen testified that in the course of the surveillance he saw young people in their late teens and early twenties congregating in the lobby of the apartment house in which Respondent's office was located; people congregating down the stairway, and actually out into the street in front of the office. SA Guillen was 22 years old at this time. A popular newspaper in New York described he and SA Cavuto as two baby-faced Federal narcotics agents

when the newspaper reported Respondent's conviction.

The Administrator is deeply disturbed by the enormous quantity of controlled substances which Samuel Fertig so wantonly prescribed. The Administrator notes that Dr. Fertig was sentenced to three years incarceration, with the requirement that he serve four months on four of the counts at a time when he was over 70 years old. Respondent was responsible, directly or indirectly, for the deaths of several young people. The Administrator is hard pressed to find any circumstances in which he would agree that the registration of Dr. Fertig with the DEA would serve the public health and safety. The Administrator makes this statement with full awareness of the fact that the State of New York has restored Respondent to full medical licensure. Nevertheless, protection of the public health and safety requires that Dr. Fertig's application for registration with DEA be denied.

It is the decision of the Administrator to deny the application filed by Respondent. Accordingly, under the authority vested in the Attorney General by 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that the application for registration filed by Samuel Fertig, M.D., on December 7, 1981, and all other pending applications, be denied. In view of all of the facts and circumstances as set forth herein, this order is effective immediately.

Dated: February 15, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-4690 Filed 2-21-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 83-34]

Harry Roodin, M.D.; Revocation of Registration

On October 26, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Harry Roodin, M.D. of 1537 Blue Hill Avenue, Mattapan, Massachusetts (Respondent) proposing to revoke his DEA Certificate of Registration AR1226706. The proposed action was predicated upon the termination of his authority to possess, dispense, prescribe or otherwise handle controlled substances in Massachusetts. Under 21 U.S.C. 824(a)(3), the DEA may suspend or revoke a registration it has granted "upon a finding that the registrant * * * has had his state license or registration suspended, revoked or denied by competent state authority and is no longer authorized by state law to engage in the manufacturing, distribution or dispensing of controlled substances."

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. This letter asserted that the Massachusetts authorities had "purported to revoke" Respondent's state medical practice license, that Respondent had filed a motion for reconsideration with the state licensing board, and that "[i]n the meantime, I still have my license, and I am still permitted to practice medicine" in Massachusetts.

Administrative Law Judge Francis L. Young concluded that it was not necessary to convene an evidentiary hearing to resolve the issue of whether or not Respondent is now authorized by the State to utilize controlled substances in his practice. Accordingly, the Administrative Law Judge conducted a telephone conference with counsel on December 2, 1983. At its conclusion, he directed counsel for each side to submit copies of all orders of the state board, of all applicable Massachusetts statutes and of any other documents relevant to this issue.

On December 19, 1983, Government counsel filed copies of documents as directed. No submission was received from Respondent. The Government's submission included: A copy of a Final Order of the Commonwealth of Massachusetts Board of Registration in Medicine issued in February, 1983 which revoked Respondent's Massachusetts certificate of registration to practice medicine in the Commonwealth; a copy of a letter to Respondent from the Commonwealth of Massachusetts Department of Public Health, Division of Food and Drugs, dated June 14, 1983, that notified Respondent "of the termination of your Massachusetts Controlled Substances Registration Certificate" because "your license to practice medicine was revoked by the Massachusetts Board of Medicine on February 15, 1983 * * *"; and copies of sections of the Annotated Laws of Massachusetts. Chapter 112, Section 64 provides that the supreme judicial court of Massachusetts, upon petition, may reverse a revocation action taken by the Board of Registration On Medicine. The section further provides that prior to the entry of a decree, i.e., a final decree after appropriate review of the administrative action, "no order shall be made or entered by the court to stay or supersede any * * * revocation * * *."

On December 28, 1983, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. No exceptions were filed and on January 23, 1984, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent has made no attempt to show that the supreme judicial court of Massachusetts has reversed the revocation of his medical practice license. Judge Young found that Respondent has had his state controlled substances registration revoked and that Respondent is no longer authorized by state law to utilize controlled substances in the practice of medicine.

The Administrative Law Judge further concluded that, since state registration and authorization are lacking, DEA has no statutory authority to permit Respondent to have a Federal registration. See 21 U.S.C. 823(f). The agency has consistently so held. See *In Re Marshall S. Tuck, M.D.*, Docket No. 80-28, 45 FR 85845 (1980); *In Re James Waymon Mitchell, M.D.*, Docket No. 79-16, 44 FR 71466 (1979); *In Re Alfred Tennyson Smurthwaite, M.D.*, Docket No. 77-29, 43 FR 11873 (1978).

Judge Young further concludes that when no fact question is involved, a plenary, adversary administrative hearing for presenting evidence and cross-examining witnesses is not necessary—even though a pertinent statute may prescribe a hearing. The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. *United States v. Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971). Therefore, the Administrative Law Judge recommended that Respondent's registration be revoked. The Administrator adopts the recommended rulings, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. Respondent's registration must be revoked.

Having concluded that there is a lawful basis for the revocation of the Repondent's registration and having further concluded that under the facts and circumstances presented in this case the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AR1226706 previously issued to Harry Roodin, M.D., be, and it

hereby is, revoked, effective March 23, 1984.

Dated: February 13, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-4689 Filed 2-21-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments shoud also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Overpayment Recovery Questionnaire
1215-0144; OWCP-20
Annually
Individual or Households
10,600 respondents; 3,533 hours.

To determine whether or not an individual is able to pay a claim for recovery of an overpayment. Consideration must be given to the individual's present and potential income, possible concealment or improper transfer of assets; and assets of the individual who may be available in enforce collection procedures.

Reinstatement

Occupational Safety and Health Administration
Maritime Employment Regulations 1218-0003; OSHA 70, 71, and 72
Annually; on occasion
Business or other for-profit; small businesses or organizations 5,362 respondents; 35,754 hours; 3 forms

OSHA needs this information to accredit companies to inspect and provide certification for cranes and derricks used in longshoring and shipyard industries and marine terminals, using the OSHA 70, 71 and 72 forms; to provide greater protection to marine terminals employees by tracking conditions that are germaine to employee safety and health.

Signed at Washington, D.C. this 15th day of February 1984.

Richard Glesener,

Acting Departmental Clearance Officer.

[FR Doc. 84-4575 Filed 2-21-84; 8:45 am]

BILLING CODE 4510-27-M, 4510-26-M

Employment and Training Administration

Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 6, 1984-February 10, 1984

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers, in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) Tha sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,072; National Steel Pellet Co., Hibbing, MN

TA-W-14,827; Bryant Grinder Corp., Springfield, UT

TA-W-14,961; FMC Corp., Industrial Chemical Group, South Charleston, WV

TA-W-15,038; Lee C. Moore Corp., Pittsburgh, PA

TA-W-14,773; Consolidated Bleaching Co., North Bergen, NJ

TA-W-14,873; Adirondack Steel Casting Co., Inc., Watervliet, NY

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-14,974; Diamond Energy Corp., Williamson, WV

TA-W-14,816; Wheeling-Pittsburgh Steel Corp., Atlanta District, Atlanta, GA

TA-W-14,817; Wheeling-Pittsburgh Steel Corp., Chicago District, Hillside, IL

TA-W-14,819; Wheeling-Pittsburgh Steel Corp., Detroit District, Southfield, MI

TA-W-14,822; Wheeling-Pittsburgh Steel Corp., Philadelphia District, Newton Square, PA

Affirmative Determinations

TA-W-14,843; Armco, Inc., Butler Works, Butler, PA

A certification was issued covering all workers separated on or after July 11, 1982 and before March 31, 1983.

TA-W-14,877; Gulf & Western Manufacturing Co., Taylor Forge, Ackerman, MS

A certificate was issued covering all workers separated on or after July 20, 1982.

TA-W-14,880; National Advanced Systems, NAS 6100 Product Line, San Diego, CA

A certificate was issued covering all workers separated on or after November 1, 1982 and before May 1, 1983.

TA-W-14,991; Bossert Manufacturing Co., Utica, NY

A certificate was issued covering all workers separated on or after October 1, 1982.

TA-W-14,818; Wheeling-Pittsburgh Steel Corp., Cleveland District, CLeveland, OH

A cerificate was issued covering all workers separated on or after June 29, 1982 and before December 31, 1983.

TA-W-14,820; Wheeling-Pittsburgh Steel Corp., Houston District, Houston, TX

A certificate was issued covering all workers separated on or after June 29, 1982 and before December 31, 1283.

TA-W-14,821; Wheeling-Pittsburgh Steel Corp., New York District, Saddle Brook, NJ

A certification was issued covering all workers separated on or after June 2, 1982 and before December 31, 1983.

TA-W-14,824; Wheeling-Pittsburgh Steel Corp., Pittsburgh District, Pittsburgh, PA

A certification was issued covering all workers separated on or after June 29, 1982 and before December 31, 1983.

TA-W-15,084; Ford Motor Co., Los Angeles Emission Laboratory, Pico Rivera, CA

A certification was issued covering all workers separated on or after September 20, 1982.

TA-W-14,914; Amity Lamp Corp., Perth Amboy, NJ

A certification was issued covering all workers separated on or after August 12, 1982 and before January 31, 1983.

I hereby certify that the aforementioned determinations were issued during the period February 6, 1984–February 10, 1984. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 S Street, N.W., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 14, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-4576 Filed 2-21-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Panel (Film/Video Production) to the National Council on the Arts will be held on March 5–7, 1984, from 9:00 a.m.–6:00 p.m. in Room 716, of the Nancy Hanks Center, 1100 Pennsylvania Avenue, Washington, DC. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Acts, Washington, DC 20506, or call (202) 682–5433.

Dated: February 13, 1984.

John H. Clark,

Director Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-4662 Filed 2-21-84; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Expansion Arts Organizations—Visual, Media, Design & Literary) to the National Council on the Arts will be held on March 5–6, 1984, from 9:00 a.m.–5:30 p.m. in Room 714, of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: February 13, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-4663 Filed 2-21-84; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: 10 CFR Part 70—Domestic Licensing of Special Nuclear Material

3. The form number if applicable: Not applicable.

4. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every five years. Reports are submitted as events occur. Nuclear material control and accounting

information is submitted in accordance with specified instructions.

5. Who will be required or asked to report: Applicants for and holders of specific licenses to receive title to, own, acquire, deliver, receive, possess, use, and initially transfer special nuclear material.

6. An estimate of the number of responses: 1,056

7. An estimate of the total number of hours needed to complete the requirement or request: 99,328

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 70 establishes procedures and criteria for the issuance of licenses to own, acquire, receive, possess, use, and initially transfer special nuclear material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 16th day of February, 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Dirctor, Office of Administration.

[FR Doc. 4694 Filed 2–21–84; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–269, 50–270 and 50–287]

Duke Power Co.; Granting Relief From ASME Code Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," to Duke Power Company, which revised the inservice inspection program for the Oconee Nuclear Station, Units Nos. 1, 2, and 3, located in Oconee County, South Carolina. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of the date of issuance.

This action provides relief from performing the 10-year interval hydrostatic test on certain piping runs involved in a variety of systems, such as the steam generator drain line, Low Pressure Injection pump suction line, etc.

The request for relief compiles with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulationis in 10 CFR Chapter I, which are set forth in the related Evaluation and letter to the licensee granting relief.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the request for relief dated October 4, 1982 (supplemented on November 23, 1982, February 17, April 20 and July 6, 1983), (2) the letter to Duke Power Company dated February 14, 1984 and (3) the Commission's relates Evaluation of Relief Request. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 14th day of February 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84–4690 Filed 2–21–84; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Information and Regulatory Affairs

Standard Industrial Classification

AGENCY: Statistical Policy Office, Office of Information and Regulatory Affairs, OMB.

ACTION: Notice of Intent to Revise the Standard Industrial Classification Manual for 1987.

SUMMARY: The Standard Industrial Classification (SIC) of business activity is a coding system used to promote comparability of statistics describing the economy. This coding scheme is used by federal agencies for collecting, tabulating, and publishing establishment data by industry. The last major revision of the SIC was in 1972. It now needs updating

This notice explains the SIC revision process and requests proposals for specific changes in the SIC Manual, which will be reissued in 1987. The criteria used in evaluating proposed SIC changes emphasize the cost to the federal government and the private sector and the continuity of statistical series.

SUPPLEMENTARY INFORMATION:

Principles and Procedures for the Review of the SIC

A. Introduction

Standard Industrial Classification (SIC) is a system for classifying establishments by type of economic activity. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments; and (2) to promote uniformity and comparability in the presentation of statistical data describing the economy. The SIC is used by agencies of the U.S. government that collect or publish data by industry. It is also widely used by state agencies, trade associations, private businesses, and other organizations.

The SIC system is designed for statistical purposes. Although the classification is also used for various administrative purposes, the requirements of government agencies that use it for non-statistical purposes play no role in development and revision of the SIC.

B. Principles of Classification

The following are the basic principles underlying the SIC classification (described more fully in the SIC Manual):

(1) The classification is organized to reflect the structure of the U.S. economy. It does not follow any single principle, such as end use, nature of raw materials, product, or market structure.

(2) The unit classified is the establishment. An establishment is an economic unit that produces goods or services—for example, a farm, mine, factory, or store. In most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity. An establishment is not necessarily identical with a company or enterprise.

(3) Each establishment is classified according to its *primary* activity. Primary activity is determined by identifying the predominant product or group of products produced or handled, or service rendered.

(4) An industry (4-digit SIC) consists of a group of establishments primarily engaged in the same activity. To be recognized as an industry, such a group of establishments must meet certain criteria of economic significance, as described in Section D.

C. Purpose and Scope of Review

The SIC is reviewed and revised periodically to reflect the changing structure of the U.S. economy. Revisions take account of technological change and the economic growth and decline of individual industries. They may include changes in industry detail or coverage, improvements to industry definitions, or the clarification of the classification of individual activities.

Review and revision of the SIC are the responsibility of the Statistical Policy Office in the Office of Information and Regulatory Affairs, Office of Management and Budget, which has developed these principles and procedures with the assistance of the Technical Committee on Industrial Classification. Committee members include the following agencies: Office of Managment and Budget, Bureau of the Census, Bureau of Economic Analysis, Bureau of Labor Statistics, Bureau of Industrial Economics, Bureau of Justice Statistics, Bureau of Mines, Economic Research Service (USDA), Energy Information Administration, Federal Emergency Management Administration, International Trade Commission, Internal Revenue Service, National Center for Education Statistics, National Center for Health Statistics, Securities and Exchange Commission, and Social Security Administration.

Proposals for revisions are accepted from Federal agencies and the public and are reviewed by the Technical Committee on Industrial Classification. Final decisions on revisions will be made by the Office of Management and Budget based on the recommendations of the Technical Committee.

Persons considering submitting proposals should note that it is not always necessary to revise the SIC to obtain more detailed statistical information. If statistical information is needed for specific products rather than establishments, it may be more appropriate to seek changes in the level of detail of data collected and published by individual government agencies than to change the SIC.

D. Guidelines for Reviewing Porposed Changes in the Classification

Proposals for revisions to the SIC will be reviewed based on the following considerations:

(1) Structure of the Classification. The overall structure is a general-purpose framework which can have its 4-digit detail rearranged for various analytical purposes. Proposed changes should be designed to fit within this structure with minimum disruption to the existing configuration.

For example, a change which consists of breaking one 4-digit industry into two or more within the same 3-digit industry group is easier and less expensive than a change which affects 3-digit groups, particularly if this in turn affects the 2-digit or divisional groupings. Changes to the basic 2- or 3-digit structure rerquire exceptionally strong justificatin showing that they reflect changes in the economy and not simply a different view of what the basic structure should be.

(2) Historical continuity. Maintaining the continunity of major Federal statistical series will be an important consideration in evaluating proposed changes in the SIC. Changes that would result in weakening principal economic indicators or that would necessitate costly backward revision of time series will require very strong justification on other grounds in order to be acceptable.

(3) Economic Significance. To be recognized as an industry, a group of establishments must have economic significance measured in terms of numbers of establishments, employment, payroll, value added, and volume of business (value of shipments or receipts). The following scoring system is used to evaluate economic significance for SIC purposes.

Values for the "average" industry are calculated by division (manufacturing, construction, retail trade, etc.) for each of the five factors. These values are used in evaluating the economic significance of a proposed SIC industry by composing the industry averages to the values for the proposed industry, as illustrated below. For each factor, a proposed industry is assigned points. The number of points is equal to the value of the factor for a proposed industry as a percentage of the value for the average industry.

The number of employees and value added are considered more significant and reliable measures of industry importance and are therefore given double weight when calculating the final score. The table below presents calculations (based on 1977 data) for a proposed potato chip and similar snack industry in Division D (manufacturing). The final score for this industry is 59 (column E total divided by column D total).

	Proposed industry (A)	Average industry (B)	Number of points (A as percent of B) (C)	Weights (D)	Weighted points (C×D) (E)
Number of establishments	230	796	29	1	29
Number of employees (thousands)	26.7	43.0	62	2	124
Payroll (million dollars)	301.3	584.0	52	1	52
Value added (million dollars)	934.5	1,295.0	72	2	144
Shipments (million dollars)	1,929.0	3,006.0	64	1	64

In general, a score of at least 20 is needed to warrant recognition as a new SIC industry. However, an existing SIC industry will be retained if it has a score of at least 10.

The 1987 review will be based on the most recent data available. In cases where data are not available for all five factors, scores will be weighted averages of those factors for which data are available.

(4) Specialization and Coverage. In order that an industry properly reflect the activity being measured, the output of the establishments in the industry should: (1) Consist mainly of the goods or services defining the industry, and (2) account for the bulk of the specified goods and services provided by all establishments. For manufacturing industries these factors are measured by the primary product specialization ratio and the coverage ratio.

The primary product *specialization ratio* indicates how much the establishments in a given industry concentrate on the activities that define the industry. This ratio is calculated by dividing the value of the primary product shipments of the establishments classified in the industry by the value of all shipments (both primary and secondary) for the same establishments.

The *coverage ratio* indicates the volume of shipments of products which define the industry that are accounted for by establishments classified in the industry. The coverage ratio is the proportion of products defining the industry shipped by establishments classified in the industry to total shipments of these products by all manufacturing establishments.

For example, establishments classified in 1977 as primarily producing transformers (SIC 3612) had shipments of $2051.1 million for transformers, total shipments for all products of $2160.6 million, and a resulting specialization ratio of 95. Total shipments by all industries of transformers were $2117.8 million, yielding a coverage ratio of 97.

A 4-digit SIC industry should have a minimum primary product specialization ratio of 80. The minimum for the coverage ratio is generally 70 for establishments producing for commercial sale. This may be reduced some for industries having significant interplant transfers or production for use within the same establishment (e.g., Gray Iron Foundries, Iron and Steel Forgings) or for industries producing the same final product as another industry but made from materials that are at a more advanced stage of manufacture (e.g., Blended and Prepared Flour). Where existing industries have relatively few large plants producing a wide range of products, the coverage ratio criterion often precludes the establishment of further industry detail.

(5) *Other Statistical Considerations.* In general, proposed new industries should meet each of the criteria of economic significance, specialization and coverage. However, industries that substantially exceed one or two of the criteria and fall slightly short on the others also may be accepted in some cases.

For example, industries which are not yet large enough, but are growing rapidly may be accepted based on current size and evidence of growth by a specified time. Proposed industries which meet the criteria only marginally should also show substantial current growth and likelihood of future growth.

Special consideration will be given to new industries and industry changes that increase comparability of the SIC with the United Nation's International Standard Industrial Classification and that increase the capability for assessing the impact of international trade on domestic industries such an increasing possiblities for comparability with the Customs Cooperation Council's Harmonized System.

Proposed new industries will be evaluated to make sure they provide for relatively stable classification of individual establishments. In some fields of activity, it is normal for the primary activity, if defined restrictively, to fluctuate from year to year. For example, shipbuilding establishments may work on defense contracts one year and on civilian contracts the next. Or establishments may perform primarily new work one year and rebuilding another. Separate industries will not be created where the distinction would result in industry shifts for establishments that are still engaged in similar industrial activity.

In some cases a proposed industry may meet all previously stated criteria but be rejected because the remaining part of the existing industry is too small for separate industry status and cannot logically be merged into other industries.

(6) Administrative Considerations. Cost to the government, as well as cost and burden to businesses that furnish data to the government, will be major considerations in evaluating proposed changes in the SIC. Revisions that involve major changes in record-keeping by business or in government agencies' procedures, records, and data series will require very strong justification to be considered.

The ability of government agencies to classify collect, and publish data on the proposed basis will also be taken into account. Proposed changes must be such that they can be applied by agencies within their normal processing operations.

Proposed industries must also include a sufficient number of companies that industry data can be published without disclosing information about the operations of individual firms.

E. Proposals

Proposals made by either private organizations or government agencies must be in writing and should include the following:

(1) Specific detail about the activities to be covered by a proposed new industry or an industry change. This may be either a description of the activities or specific product or subindustry codes, such as 5- or 7-digit Census product codes.

(2) Specific indication of the relationship to existing industries.

(3) Statistical evidence that the proposed change meets the criteria described in Sections B and D above. Government data are preferred; however, other data that are reasonably consistent with government data are also acceptable. Major differences should be explained.

F. Time Schedule

All proposed amendments to the 1972/1977 edition of the establishment SIC Manual should be submitted to the Chairperson, Technical Committee on Industrial Classification, Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, as soon as possible, but no later than October 1, 1984. The revised classification will become effective on January 1, 1987.

Proposals submitted for previous revisions must be resubmitted with the information specified in this statement.

G. Public Review Procedure

All proposed changes to the 1972/1977 edition of the SIC Manual recommended by the Technical Committee will be published in the **Federal Register** for review and comment prior to final action by the Office of Management and Budget. Those making proposals will be notified directly of actions taken by the Technical Committee; others will be advised through the **Federal Register**.

FOR FUTHER INFORMATION CONTACT: Pamela S. Powell-Hill, Statistical Policy Office, OIRA, Room 3019, NEOB, Washington, D.C. 20503; Telephone (202) 395–3093.

Christopher DeMuth,

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

[FR Doc. 84–4612 Filed 2–21–84; 8:45 am]

BILLING CODE 3110–01–M

POSTAL RATE COMMISSION

[Order No. 547; Docket No. A84–6]

Benoit, Wisconsin 54816 (Mrs. Lilly Meyers, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: February 14, 1984.

Docket Number: A84–6

Name of Affected Post Office: Benoit, Wisconsin 54816

Name(s) of Petitioner(s): Mrs. Lilly Meyers

Type of Determination: Closing

Date of Filing of Appeal Papers: January 31, 1984

Categories of Issues Apparently Raised:

1. Economic Savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may

incorporate by reference any such memorandum previously filed.

The Commission orders: (A) The record in this appeal shall be filed on or before February 15, 1984.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Docket No. A84–6 Benoit, Wisconsin 54816

January 31, 1984: Filing of Petition
February 14, 1984: Notice and Order of Filing of Appeal
February 21, 1984: Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
March 1, 1984: Petitioner's Participant Statement or Initial brief [*see* 39 CFR 3001.115(a) and (b)].
March 16, 1984: Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
March 31, 1984: (1) Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].
April 9, 1984: (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
May 30, 1984: Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 84–4679 Filed 2–21–84; 8:45 am]

BILLING CODE 7715–01–M

[Order No. 548; Docket No. A84–7]

Cotter, Iowa 52221 (Ronald and Joan Baird, Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: February 14, 1984.

Docket Number: A84–7

Name of Affected Post Office: Cotter, Iowa 52221

Name(s) of Petitioner(s): Ronald and Joan Baird

Type of Determination: Closing

Date of Filing of Appeal Papers: February 6, 1984

Categories of Issues Apparently Raised:

1. Effect on Community Served by Office [39 U.S.C. 404(b)(2)(A)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner(s). In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders: (A) The record in this appeal shall be filed on or before February 21, 1984.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Docket No. A84–7, Cotter, Iowa 52221

February 6, 1984: Filing of Petition
February 14, 1984: Notice and Order of Filing of Appeal
February 26, 1984: Last day for filing of petitions to intervene [*See* 39 CFR 3001.111(b)].
March 7, 1984: Petitioners' Participant Statement or Initial Brief [*see* CFR 3000.115(a) and (b)].
March 22, 1984: Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
April 6, 1984: (1) Petitioners' Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].
April 13, 1984: (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
June 5, 1984: Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 84–4680 Filed 2–21–84; 8:45 am]

BILLING CODE 7715–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1984, shall be at the rate of 20 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1984, 25.3 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the the Railroad Retirement Account and 74.7 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 14, 1984.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 84–4656 Filed 2–21–84; 8:45 am]

BILLING CODE 7905–01–M

Privacy Act of 1974; Proposed Changes to System of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed change to system of records.

SUMMARY: The purpose of this document is to give notice of proposed routine use to one of its systems of records.

DATES: The system of records for which the new routine use is proposed shall be amended as proposed without further notice 30 calendar days from the date of publication, (March 23, 1984), unless comments are received before this date which would result in a contrary determination.

ADDRESS: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, Telephone 312–751–4548.

SUPPLEMENTARY INFORMATION: Proposed routine use "i" to system of records RRB–19, Payroll Record System, would permit the RRB to furnish pertinent payroll information to other Federal agencies for the purpose of collecting debts to those agencies of the RRB. Among other things, the Debt Collection Act of 1982 (Pub. L. 97–365) amended 5 U.S.C. 5514, which deals with the recovery of debts to the United States by installment collections from current pay of Federal employees and members of the Armed Forces and Armed Forces Reserves. It provides for the dissemination of information, including home address of Federal employees, from one Federal agency to another for collection of past-due debts owed to the Government. The primary purpose of the proposed routine use is to enable the RRB to cooperate with other Federal

agencies in their effort to collect debts owed to them by individuals identified as RRB employees. Under the due process provisions of the Act, the agency to whom the debt is owed must notify the debtor of its intention to request the agency for whom the debtor works to collect the debt through salary offset and give the debtor the opportunity to protest or satisfy the debt prior to the salary offset being made. Through matching programs with the Office of Personnel Management the agency to whom the debt is owed may learn that the debtor is employed by the RRB. It may not have the current address of the debtor/RRB employee. The routine use would permit the RRB to furnish the home address of the debtor/RRB employee.

A secondary purpose of the proposed routine use would be to enable the RRB to release to another Federal agency information about a former RRB employee who owes a debt to the RRB in a case where the RRB has reason to believe that the former employee is not employed by another agency and the RRB seeks the assistance of that agency to collect the debt through salary offset. In such case, the RRB might need to obtain from the other agency the former RRB employee's home address to comply with the due process provisions of the Debt Collection Act. To obtain the address and also to request the collection of the debt through salary offset, the RRB would need to identify the former employee as a debtor and to provide other pertinent payroll information and information about the debt owed.

System of records RRB–19, Payroll Records System, was last published in its entirety on March 13, 1980, at 45 FR 16373–374.

The proposed action is not within the purview of the provisions of 5 U.S.C. 552(0) which requires the submission of a new or altered system report.

Dated: February 13, 1984

Beatrice Ezerski,

Secretary to the Board.

A new paragraph "i" is added to RRB–19 to read as follows:

RRB–19

SYSTEM NAME: PAYROLL RECORDS SYSTEM—RRB

* * * * *

ROUTINE USES OF RECORDS MAINTAINED BY THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

i. For employees identified as having defaulted in the repayment of an obligation incurred under any statutory authority except the Internal Revenue Code, the Social Security Act or the U.S. tariff laws, pertinent payroll information, including home address information, may be disclosed to other Federal agencies for the purpose of collecting debts owed to those agencies or the the RRB.

* * * * *

[FR Doc. 84–4669 Filed 2–21–84; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 23223; 70–6949]

Consolidated Natural Gas Co.; Proposed Charter Amendments

February 14, 1984.

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed with this Commission an application-declaration pursuant to sections 6(a)(2), 7, 10(b), 10(e), and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 thereunder.

The Board of Directors of Consolidated has adopted resolutions amending its Certificate of Incorporation ("Charter") and will submit the proposals for a vote of its common shareholders at the annual meeting to be held on May 15, 1984. The amendments will (1) change the provisions concerning the issuance of unsecured debt; (2) create a staggered board of directors; and (3) add provisions related to mergers and other business combinations. The affirmative vote of a majority of the outstanding common stock is required.

Under the present Charter, without the approval of the holders of a majority of the preferred stock outstanding, unsecured debt cannot exceed 20% of the aggregate of consolidated secured debt and shareholders equity, and total unsecured debt with a maturity of less than 10 years cannot exceed 10% of that aggregate. The principal exceptions are: (1) Debentures; (2) loans which mature in less than seven years which do not exceed $100 million; and (3) inventory loans of one year or less. All public financing for the system is done by Consolidated.

Consolidated proposes to amend these provisions so that it could issue or assume (1) indebtedness with a maturity of more than one year as long as such debt does not exceed 60% of the total consolidated capitalization of the company and its subsidiaries, and (2) indebtedeness with a maturity of one year or less as long as total short-term debt does not exceed 10% of total consolidated capitalization. There would be no restriction on the issuance or assumption of debt to finance gas inventory.

Another proposed amendment would divide the board of directors into three classes, with each class to have a staggered three-year term, the term of one class expiring each year. The rights of preferred shareholders to elect a majority of the whole board of directors upon certain dividend defaults would be unaffected by the proposal.

Amendments concerning mergers and certain other "business combinations" provide that the price to be paid by a Substantial Stockholder (defined as a holder of 5% or more of its common stock) to the company's other common shareholders in a business combination must be not less than the highest price per share paid by the Substantial Stockholder after the 5% acquisition, and in the same form as paid for such other shares. The "continuing directors," as specifically defined, have sole discretion to determine whether the transaction is a business combination, when 5% of the company's stock was acquired, and other specified issues.

Fees and expenses to be incurred in connection with the proposal are estimated at $96,200. No state or federal commission, other than this Commission, has jurisdiction thereover.

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 March 8, 1984, to 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 the 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 and will receive a copy of any notice or order issued. After said date, the application-declaration may be granted and permitted to become effective, or the Commission may take such other action as may be appropriate.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-4623 Filed 2-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23221; 70-6953]

New England Electric System; Proposed Amendment of Agreement and Declaration of Trust and Solicitation of Proxies

February 13, 1984.

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01581, a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 62 promulgated thereunder.

NEES proposes to amend its Agreement and Declaration of trust to increase the authorized number of common shares from 30 million to 75 million and to solicit proxies in connection therewith. The company intends to submit to its shareholders at the annual meeting to be held on April 24, 1984, a management proposal to authorize the amendment. As of December 31, 1983, NEES had issued and outstanding 24,549,338 common shares. The company proposes this increase in order to have shares available for dividend reinvestment, employee share ownership, incentive thrift plans, or in the event that the Board of Directors votes to "split" the common shares.

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 March 12, 1984, 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 the 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 in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-4621 Filed 2-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20649; SR-NYSE-83-28]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

February 13, 1984.

The New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, NY 10005, submitted on July 1, 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 change certain of its listing standards under NYSE Rule 495B as follows. Existing Rule 495B.10, governing stock distribution, would be amended to permit prospective NYSE listees to quality for listing by meeting either: (i) The existing requirement of 2,000 common stockholders of 100 or more shares, or (ii) alternatively, the dual requirements of 2,200 common stockholders (regardless of the number of shares held by each stockholder) and an average monthly trading volume for the most recent six months of 100,000 shares. Additionally, under either alternative, the minimum number of common shares that must be publicly held would be increased from 1,000,000 to 1,100,000. Proposed Rule 495B.20, captioned "Value," would be amended to increase the required minimum market value of publicly-held shares.[1]

Proposed Rule 495B.30, captioned "Demonstrated Earnings Power," would continue the NYSE's existing requirement that income before federal income taxes and under competitive conditions must be at least $2,500,000 in the most recent fiscal year and $2,000,000 in each of the preceding two years. Additionally, the rule would provide an alternative means of calculating demonstrated earnings power, providing that a company would satisfy this standard if the aggregate demonstrated earnings power for the three most recent fiscal years is at least $6,500,000 together with a minimum for the most recent fiscal year of at least $4,500,000, with the stipulation that all three years must be profitable.[2]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20030, August 1, 1983) and by publication in the **Federal Register** (48 FR 36231, August 9, 1983). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission received comment letters from the American Stock Exchange ("Amex") [3] and from the National Association of Securities Dealers ("NASD") [4] relating to the proposed rulechange. In addition, the NYSE submitted a letter in response to a request by the Division of Market Regulation for clarification of the proposed minimum numerical listing standards and for discussion of issues raised by Amex in its August 29, 1983 letter.[5] In its letter dated August 29,

[1] The proposed amendments would increase required market value from a range of $8-16,000,000 under the current rule to a range of $9-18,000,000. The market value is subject to adjustment, depending on market conditions. The procedures for calculation of adjustment are described in proposed NYSE Rule 495B.20.

[2] In its initial filing, the NYSE also proposed two additional alternate listing standards, included as the last two paragraphs of proposed Rule 495B.30, dealing with "funds provided from operations" and relisting of companies previously listed on the NYSE. The NYSE has stated that it does not object to partial approval of SR-NYSE-83-28, excluding the provisions noted above. *See* letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated January 13, 1984. The Commission therefore takes no action in this order with respect to the proposed last two paragraphs of NYSE Rule 495B.30.

[3] *See* letters from Richard O. Scribner, Executive Vice President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated August 29, 1983, and December 1, 1983.

[4] *See* letter from Gordon S. Macklin, President, NASD, to George A. Fitzsimmons, Secretary, SEC, dated September 15, 1983. The NASD stated that the proposed rule change would lower NYSE listing requirements and that, in this context, the Commission should also consider the appropriateness of NYSE delisting requirements under NYSE Rule 500. Rule 500 provides that, absent special circumstances, a company's proposal to withdraw from NYSE listing must be approved by two-thirds of the outstanding security, together with a failure of 10% of individual shareholders to object. The NASD does not have such a requirement and stated that such a "restrictive" provision, in view of the increased number of companies eligible to list as a result of NYSE's proposed amendments, "perpetuates and . . . exacerbates the existing anti-competitive anomaly included in the exchange listing process."

[5] *See* letter from Richard A. Grasso, Executive Vice President, NYSE, to Richard T. Chase, Assistant Director, Division of Market Regulation, dated October 14, 1983.

1983, Amex stated that the proposed NYSE amendments appeared to lower NYSE listing criteria, thereby impairing Amex's ability to attract new listings. Amex posed a number of specific questions relating to the proposed minimum and numerical alternate listing standards under Rule 495B.30 ("Demonstrated Earning Power").[6] In addition, Amex requested further clarification concerning what type of company would qualify for listing as a "high quality growth company" for purposes of rule 495B.30, how "profitability" would be defined under that rule, and whether any minimum level of profitability in each of the three years preceding listing was required. Finally, Amex, stated that further amplification was needed regarding the potential burden on competition of the proposed amendments.

In its October 14, 1983 letter, the NYSE, among other things, (i) provided technical clarification of "demonstrated earnings power" by defining the term as "income before federal income taxes and under competitive conditions"; (ii)) stated that the phrase "high quality growth company" was not limited as to type of company but was meant to descibe the issuers the NYSE would expect to qualify under the alternate "demonstrated earnings power" standard; [7] (iii) stated that "profitable" under Rule 495B.30 means that a company may not report a net loss in any of the three years in question; and (iv) indicated that the proposed alternate standard under Rule 495B.30 does not specify any minimum level of net income.

With respect to whether the proposed amendments would impose a burden on competition within the meaning of Section 6(b)(8) of the Act, the NYSE stated that, while a greater number of Amex-listed companies might be eligible for NYSE listing under the proposed standards than are currently eligible, this did not impose a burden on competition, and that that the proposed modifications would have a very limited effect on either unlisted prospect companies or other securities exchanges.[8]

In its letter to the Commission dated December 1, 1983, the Amex reiterated the position expressed in its earlier letter that the NYSE proposal would adversely affect competition by allowing the NYSE to compete directly with the Amex and over-the-counter markets for new listings which would not currently be eligible for NYSE listing. In addition, Amex stated that the proposed amendments were "vague" and could justify "vast numbers of listings" of companies that would not currently qualify for NYSE listing.

The Commission does not believe the NYSE's proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, while the proposal will not result in a substantial number of additional companies becoming eligible for NYSE listing, to the extent that the proposal has that effect it should serve to increase competition for new listings between the NYSE and other self-regulatory organizations. In this regard, the Commission notes that the NYSE listing standards, taken as a whole, remain substantially more restrictive than the current requirements of other self-regulatory organizations.[9] In addition, the Commission does not believe that the proposed alternate distribution standard and net income standards constitute a material lowering of NYSE listing criteria, despite the fact that they increase the number of potential NYSE listees. The alternate distribution standard, for example, requires a six-month trading volume minimum not present under current distribution standards, and the alternate net income standard will still require the current 3 year aggregate income requirement of $6,500,000, (although it would redistribute the aggregate among the three years preceding listing). These standards remain clearly sufficient to ensure that stocks listed on the NYSE will be suitable for auction trading. Moreover, the Commission views the NYSE's proposed alternate distribution standard, the alternate standard relating to demonstrated earnings power, and the definition of "profitable" under Rule 495B.30 as clarified in NYSE's October 14, 1983 letter as sufficiently specific to ensure that the potential number of eligible companies under such standards will not be unduly expanded.[10]

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[6] The only NYSE alternate listing standard at issue in this order is that which would permit listing of a company with aggregate pre-tax income of $6,500,000 for the last 3 fiscal years, together with a minumum of $4,500,000 in the most recent fiscal year (all three years being profitable). See note 2, *Supra*.

In addition, the Amex raised a number of specific questions relating to the proposed alternate distribution-based guidelines. The NYSE's current distribution standard under Rule 495B.10 requires 2000 holders of 100 shares or more with no specified minimum trading volume. The proposed alternate distribution standard would also permit listing of an issue with 2200 total stockholders together with a 100,000 share average monthly trading volume for the most recent 6 months. Under either standard, 1,100,000 shares must be publicly held (increased from the current 1,000,000 share requirement). In its August 29, 1983 letter, Amex asked under what circumstances the alternate volume-based guidelines would be applied (*e.g.* only when, after a good faith effort, the applicant company is unable to establish the number of shareholders or shares in the relevant categories), and how the NYSE would assure adequate public participation (*i.e.*, would the volume requirement be satisfied by a relatively small number of large trades scattered throughout the six-month period).

While the NYSE's October 14, 1983 letter did not respond to Amex's question regarding the alternative distribution standard, the Commission notes that existing Rule 495B.10 provides that an indication of a lack of public interest in the securities of a company, such as low trading volume on another exchange, lack of dealer interest in the over-the-counter market, or slow growth in number of shareholders, may require higher distribution standards to be met. The Commission believes that it is not essential for the NYSE to condition its alternate distribution standard on, for example, the applicant's inability to establish an accurate shareholder count. The primary regulatory purpose accomplished by distribution standards is the assurance of sufficient public interest in the security to provide the depth and liquidity necessary for a successful auction market in a stock. The Commission views the proposed increase in the required number of publicy-held shares, together with a level of total stockholders higher than the 2000 round-lot holders currently required, distribution standards substantially higher then those of any other exchange, as sufficient to meet that regulatory purpose.

[7] The phrase "high quality growth company" is not included in proposed Rule 495B.30, but is included in the NYSE's filing describing the proposed amendments.

[8] In its October 14, 1983 letter, the NYSE estimates that the proposed modifications might allow 12 companies currently listed on the Amex to qualify for NYSE listing and an additional 28 companies trading over-the-counter to similarly qualify. The NYSE notes, however, that this does not mean that all such companies would qualify under all applicable criteria. In addition, the NYSE estimates that about 420 companies not listed on the NYSE currently qualify for NYSE listing under existing miniumum numerical standards.

[9] The NYSE, for example, requires 2000 holders of 100 shares or more; Amex requires a minimum of 1000 public stockholders, including at least 800 holders of 100 shares or more. Under its proposed alternate distribution standard, the NYSE would require 2,200 total shareholders together with an average monthly trading volume of 100,000 for the preceding six months; under Amex's current alternate distribution standard (applicable when a company is unable to provide specific distribution data), there is a minimum 800 shareholder requirement, together with an approximate 2000 share daily volume for the preceding six months.

The NYSE proposal would require that 1,100,000 shares be publicly held; Amex requires 500,000 shares. Amex requires a $3,000,000 aggregate market value for the prospective listed company's shares, compared to NYSE's $9–18,000,000 market value requirement (subject to adjustment depending on market conditions). Under the first paragraph of proposed NYSE Rule 495B.30, a company must have net pre-tax income of $2,500,000 for the latest fiscal year, and $2,000,000 for each of the preceding two years; the Amex requires a pre-tax income (before extraordinary items) of $750,000 for the year preceding the listing application, and no specific earnings requirement for preceding years. The NYSE's proposed alternative earnings standard would require $4,500,000 pre-tax earnings for the year preceding the application. *See* §§ 101, 102, and 107 of the Amex Company Guide.

[10] The Commission notes, as did the NASD (see note 4, *supra*), that the combination of a lowering of NYSE listing standards, together with the restriction in NYSE Rule 500 on listed companies seeking to

Continued

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Section 6(b)(5) and 6(b)(8) and the rules and the regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-4620 Filed 2-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13766; 812-5445]

The Prudential Series Fund, Inc.; Filing of Application

February 14, 1984.

Notice is hereby given that The Prudential Series Fund, Inc. ("Applicant"), 3003 North Central Avenue, Phoenix, Arizona 85012, filed an application on February 7, 1983, and an amendment thereto on January 5, 1984, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from the provisions of section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 promulgated thereunder, to the extent necessary to permit it to use the amortized cost valuation method for the purpose of valuing the short-term debt obligations held in certain of its portfolios. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act for the complete text of those provisions that are relevant to the application.

The application states that Applicant is a corporation organized under the laws of Maryland and is registered under the Act as an open-end, diversified management investment company. The Prudential Insurance Company of America ("Prudential") is Applicant's investment manager. Applicant states that it has five portfolios, interests in each of which are represented by a separate class of capital stock. Applicant represents that it intends to offer its capital stock exclusively to separate accounts of Prudential or Prudential subsidiaries established in connection with variable annuity contracts. Such separate accounts are registered under the Act as unit investment trusts.

The application further states that Applicant desires to use the amortized cost valuation method for the purpose of valuing the short-term debt obligations held in its Conservatively Managed Flexible Portfolio, and its Aggressively Managed Flexible Portfolio (hereinafter referred to collectively as the "Flexible Portfolios"). According to the application, the two Flexible Portfolios seek to attain their respective investment objectives through investing in combinations of short-term debt obligations, intermediate and long-term bonds, and common stocks. Under the amortized cost method of valuation, securities are originally valued at the cost at which they were purchased, and their value is adjusted daily to account for amortization of any premium or for accretion of any discount. The provisions of the Act from which Applicant seeks exemption, however, require that investment companies calculate their net asset value for the purpose of pricing their shares for sale, repurchase and redemption by valuing at market value those securities in their portfolio for which market quotations are readily available.

According to Applicant, the primary concern that the Commission has expressed about use of the amortized cost valuation method has been that this method of valuation may, in times of sharp increases or decreases in interest rates, result in dilution of shareholders, interests in investment companies. Applicant states that in order to protect against such dilution, prior exemptions granted by the Commission and Rule 2a–7 under the Act to permit money market funds to use amortized cost valuation contain a series of conditions designed to assure that use of amortized cost valuation will not result in excessive dilution or other unfair results to shareholders. Applicant further states that, in connection with the valuation of short-term debt securities held by the Flexible Portfolios, it is willing to consent to the imposition of what are in substance the same conditions as those generally imposed by the Commission in prior exemption orders and Rule 2a–7 under the Act, except for the condition requiring a stable net asset value per share.

According to Applicant, the Flexible Portfolios cannot maintain a stable price per share, one of the conditions contained in the prior exemptive orders and Rule 2a–7, since they invest in common stock and intermediate and long-term bonds, as well as short-term debt obligations. Applicant submits that there is no necessary relationship between use of the amortized cost valuation method and the maintenence of a stable price for each share of an investment company. Applicant asserts that inclusion of this condition in prior exemptive order and Rule 2a–7 came about because money market funds that sought exemptions to permit them to use amortized cost valuation did so to facilitate their ability to maintain a stable price per share for the convenience of their shareholders. Applicant states that it seeks to use amortized cost valuation for short-term debt obligations held in the Flexible Portfolios in order to achieve significant savings in its administrative costs.

Applicant submits that use of amortized cost valuation in connection with the operations of the Flexible Portfolios is especially unlikely to result in any dilution or other unfair results to shareholders in those portfolios because they are not money market funds, but rather a particular type of investment vehicle for variable annuity contracts. The contract-holders who participate in any of the portfolios of Applicant will tend to have a longer range investment perspective than shareholders in money market funds, since withdrawals from the contracts may involve the payment of deferred sales charges and adverse federal income tax consequences. Applicant further states that such a long-range investment perspective is especially likely to be characteristic of those contract-holders who allocate their purchase payments to the Flexible Portfolios. According to the application, the Flexible Portfolios are designed to accommodate those contract-holders who not wish to allocate by themselves their purchase payments among equity, bond, and money market investments, but who rather wish Prudential to do so by varying the investments of the Flexible Portfolios among those types of securities as its appraisal of current economic and financial conditions

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withdraw from listing, conceivably could have an anti-competitive effect since it would make it possible for the NYSE to freely prospect for listings from other self-regulatory organizations while making it difficult for them to seek listings from among NYSE-listed companies. In the absence of indications that the provisions of Rule 500 currently are serving to restrain companies seeking to withdraw from NYSE listing, however, and in light of the fact that NYSE listing standards remain substantially more restrictive than those of other self-regulatory organizations, the Commission does not deem it necessary to review this issue in connection with instant proposed rule change. In the event the NYSE seeks further modifications of its listing standards, however, such a review might then be appropriate.

dictates. Applicant states that even large fluctuations in interest rates are therefore unlikely to trigger large-scale investments in or redemptions of shares of the Flexible Portfolios since participants or potential participants in those Portfolios are not likely to be the type of investors who wish to manage actively their investments.

Applicant therefore requests exemption from the provisions of section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 promulgated thereunder to the extent necessary to permit it to use the amortized cost valuation method for the purpose of valuing short/term debt obligations held in its Flexible Portfolios. Applicant states it is willing to consent to the entry of an order by the Commission conditioning the grant of its exemptive request upon the following conditions:

(1) In supervising the operations of Applicant and delegating special responsibilities involving portfolio management to its investment manager, the Board of Directors of Applicant undertakes (as a particular responsibility within the overall duty of care owed to shareholders of Applicant) to establish procedures reasonably designed, taking into account current market conditions and the portfolios' investment objectives, to minimize the deviation between the value of each Flexible Portfolio's short-term debt obligations as computed through use of the amortized cost valuation method and their value as determined through use of available market quotations.

(2) Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, between the value of the Flexible Portfolios' short-term debt obligations as determined by using available market quotations, from their values as computed through use of the amortized cost method of valuation; and the maintenance of records of such review. To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Directors in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio investments, 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 amortized cost value of the short-term debt obligations in the Flexible Portfolios exceeds ½ of 1 percent, a requirement that the Board of Directors promptly consider what action, if any, should be initiated.

(c) If the Board of Directors believes the extent of any deviation from the amortized cost value for the short-term debt obligations in either Flexible Portfolio may result in material dilution or other unfair results to contractholders, it will take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten such portfolio's average portfolio maturity; withholding the crediting of additional shares in lieu of dividends; redeeming shares in kind; or using a net asset value per share as determined by using available market quotations.

(3)(a)(i) The Flexible Portfolios will use the amortized cost valuation method only for their short-term debt obligations—*i.e.*, obligations with remaining maturities of one year or less (except that repurchase agreements having a term of one year or less from the date of delivery of the repurchase agreement may be valued through use of the amortized cost valuation method regardless of the maturity of the underlying securities held pursuant to the repurchase agreement). (ii) Each of the Flexible Portfolios shall maintain a dollar-weighted average portfolio maturity for its short-term debt obligations appropriate to its objective of minimizing the deviation from its net asset value per share as determined through use of the amortized cost valuation method from its net asset value per share as determined through use of available market quotations, provided, however, that neither of the Flexible Portfolios shall maintain a dollar-weighted average portfolio maturity for its short-term debt obligations which exceeds 120 days. If the disposition of a portfolio instrument should result in a dollar-weighted average portfolio maturity for the short-term debt obligations of either Flexible Portfolio which exceeds 120 days, such Portfolio's available cash will be invested in such a manner as to reduce such average maturity to 120 days or less as soon as reasonably practicable.

(b) The maturity of short-term debt obligations held by these Portfolios shall be calculated as set forth in Rule 2a–7 under the Act.

(4) Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in subparagraph (1) above, and the Applicant will record, maintain, and preseve 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) The short-term debt obligations held in the Flexible Portfolios, including repurchase agreements, will be limited to those United States dollar-denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality. For this purpose, "high quality" instruments shall mean those instruments that are rated by any major rating agency within its two highest rating categories or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) If any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter, Applicant will file a quarterly report on Form N–1Q and will include, as an attachment thereto, a statement describing 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 March 12, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his 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, DC. 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 attorner-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.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-4619 Filed 2-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23222; 70-6950]

Western Massachusetts Electric Co.; Proposal To Issue and Sell First Mortgage Bonds

February 13, 1984.

Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, an electric utility subsidiary of Northeast Utilities, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

WMECO proposes to issue and sell in one or more series, no later than March 31, 1985, depending upon prevailing market conditions, up to $50 million in principal amount of its First Mortgage Bonds ("Bonds"). The interest rate (which shall be multiple of ⅛ of 1%) and the price, exclusive of accrued interest, to be paid to WMECO (which shall not be less than 98% nor more than 102% of the principal amount thereof) will be determined in accordance with the Commission's Statement of Policy concerning the application of Rule 50, as set forth in Release No. 35-22623 (September 2, 1982), by using alternative methods to develop and procure two or more competitive offers for the purchase of such securities.

The Bonds will be issued under the First Mortgage Indenture and Deed of Trust dated as of May 1, 1954 ("Indenture"), between WMECO and The First National Bank of Boston, Successor Trustee, as heretofore supplemented and amended, in the case of each series of the Bonds, by a supplemental indenture setting out the terms of the Bonds. The terms applicable to each series of the Bonds will include a provision that none of the bonds of such series shall be redeemed at the applicable optional redemption price prior to a date in 1989 or 1990 (approximately five years after issuance), if such redemption is for the purpose of or in anticipation of refunding such Bonds through the use, directly or indirectly, of funds borrowed by WMECO at an effective interest cost to WMECO of less than the effective cost to WMECO of the Bonds.

The net proceeds from the issue and sale of the Bonds will be used to repay in part short-term borrowings and construction trust borrowings, which were incurred to finance WMECO's construction program and, in the case of short-term borrowings, for general working capital purposes.

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 March 8, 1984, 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 the 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 in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-4622 Filed 2-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20650; File No. SR-NSCC-82-25]

Self-Regulatory Organization; Filing of Proposed Rule Change by the National Securities Clearing Corporation

February 13, 1984.

The National Securities Clearing Corporation (NSCC) submitted to the Commission on October 19, 1982, as amended by letter dated January 25, 1984, a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, that would enable NSCC to implement a new program whereby members would be permitted to anticipate receiving securities through the allocation process. This program requires new procedures for movements to the "Long Free Account" other than for the Stock Borrow Program. The new program is intended to mitigate unnecessary stock borrowing by members. 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

NSCC proposes to amend Section VI, subsection E, *Controlling Receipts from CNS*, of National Securities Clearing Corporation ("NSCC") SCC Division Procedures, by adding a new section 5, *Fully Paid For Account*, As follows:

5. *Fully Paid For Account (Procedures for Movements to the Long Free Account other than for the stock Borrow Program).*

The Corporation's processing day is divided into two parts. It begins with an evening cycle on the evening preceding the business day for which the work is being processed and is followed by a day cycle which ends on the business day for which the work is processed. If a Member with a Long Position and/or a position due for settlement on the next business day, in anticipation or receiving securities from the corporation, (other than municipal securities, as that term is defined by the securities Exchange Act of 1934, as amended), as a result of the allocation process during the evening cycle, instructs that securities within its possession or control (other than municipal securities) be delivered on the next business day and is subsequently not allocated the securities during the evening cycle, the Member may, in order to meet the "custmer segregation" requirements of Commission Rule 15c3-3, instruct the Corporation, during the following day cycle by the time specified by the Corporation, to transfer the position(s) which has not been allocated to a special CNS sub-account (the "Long Free Account"). At the end of such day cycle, if the securities have still not been allocated, the Corporation will debit the Member's settlement account for the value of the position in the Long Free Account. The Long Free Account will be guaranteed by the Corporation and will be marked to the market daily. All funds which the Corporation receives from debiting the Member's settlement account for the value of a position moved into the Long Free Account and all marks credited to the Long Free Account as a result of marking positions to the market daily, will be segregated by the Corporation from all other funds received by the Corporation. Any time that a Member determines that he no longer needs the position(s) in the Long Free Account for 15c3-3 purposes, he may instruct the Corporation to transfer back the position(s) to its Long Valued Account

and make the appropriate adjustment to its settlement account.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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

Presently, participants in NSCC's Stock Borrow Program, who as a result of making securities available for borrowing by NSCC find that they have created a deficit in the amount of securities of which they must have possession or control, can instruct NSCC to convert their right to receive back the securities versus payment (represented by a Long Valued Position) into a right to receive the securities back without payment (represented by a Long Free Position). The Long Free Position is carried on NSCC's books in a separate Long Free Account. The Commission, by letter dated August 3, 1981, has taken the position that, since NSCC has already been paid for these Long Free Positions and is therefore in a position to guarantee delivery to a SIPA trustee, if one were appointed, of the securities, when received from the short valued side, the position carried in the Long Free Account representing securities due the Member may be deemed within the control of said Member for the purposes of SEC Rule 15c3–3. The proposed rule change would, subject to receipt of either an approval or a no-action letter from the Commission, expand a Member's ability to convert an obligation to receive securities from NSCC for payment (represented by a Long Valued Position) into an obligation to receive securities without payment (represented by a Long Free Position) and to have the Long Free Position representing securities due the Member be deemed within control of the Member for the purposes of SEC Rule 15c3–3. The proposed rule change is intended to address the following circumstances. Generally, Members receive at least 75% or more of the securities due from NSCC each day as a result of the normal allocation process. However, Members do not know on any given day which securities will be among the 75% allocated. Accordingly, if a particular Member has securities which are due from NSCC, at the same time owes these securities to a third party, and also has securities segregated for a customer, he only has the following options: (a) He can fail to deliver to the third party until he is actually allocated the securities by NSCC; or (b) he can go outside NSCC to borrow the securities to make the delivery and then return the securities borrowed when NSCC actually allocates the securities to him. Even though he could anticipate that he would be allocated the securities that day by NSCC, and stands at least a 75% chance of being right, he could not instruct that the securities segregated for his customer be delivered out of his control account since, if he did not receive the allocation, and was unable to borrow the securities that day, he would be in violation of SEC Rule 15c3–3. To make prompt delivery to the third party, who in many cases may be dealing on a delivery versus payment basis, Members are thus encouraged to borrow stock before the allocation process is even begun. The result is that Members borrow not only the 25% which may not be allocated but the full 100%, thus increasing borrowings unnecessarily by three-fold.

If the Commission will permit the treatment of positions in the Long Free Account under these circumstances as in the possession or control of the Member, as are positions credited to the Long Free Account under the Stock Borrow Program, the proposed rule change would mitigate the unnecessary stock borrowings by Members which currently take place. Since the proposed rule change will eliminate unnecessary stock movements, provide a guarantee and automatic mark procedure by NSCC which would not otherwise exist if the securities were borrowed outside the NSCC system, the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, (the "Act"), as amended, and the rules and regulations thereunder applicable to NSCC in that it will enable Members to promptly settle their securities transactions more efficiently within the national clearance and settlement system.

The proposed rule change will be implemented with the same diligence and care as to the safeguarding of securities and funds in NSCC's custody and control or with which it is responsible as is now employed in the operation of the Stock Borrow Program.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its 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 approved.

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. 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 abolve 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: February 13, 1984.
Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 84-4618 Filed 2-21-84; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/712]

Modem Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Modem Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 8, 1984 at the Adams-Mark Caribbean Gulf Hotel, 430 Gulf View Boulevard South, Clearwater, Florida. The meeting will begin at 8:30 a.m. This Working Party deals with matters in telecommunications relating to the development of international digital data transmission.

The agenda for the meeting is as follows:

1. Review the draft 14.4 kilobits-per-second Modem Recommendation;

2. Discuss items concerning the upcoming CCITT Study Group XVII meeting and the 14.4 kilobits-per-second Modem Rapporteurs Meeting in Paris.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Requests for further information may be directed to Mr. Earl Barbely, State Department, telephone 202-632-3405 or Mr. T. de Haas, Chairman of U.S. Study Group D, Department of Commerce, Boulder, Colorado, telephone 303-497-3728.

Dated: February 10, 1984
Earl S. Barbely,
Director, Office of International Communications Policy.
[FR Doc. 84-4650 Filed 2-21-84; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-004]

Port Access Routes; Approach to New York

Correction

In FR Doc. 84-3521 appearing on page 5017 in the issue of Thursday, February 9, 1984, make the following correction.

In the first column, second paragraph of the **SUMMARY**, items 1-11 should have read as follows:

(1) 40°28'15" N, 73°40'45" W
(2) 40°32'30" N, 73°11'36' W
(3) 40°32'36" N, 73°05"00" W
(4) 40°35'48" N, 70°14'12' W
(5) 40°37'00" N, 69°15'12' W
(6) 40°23'36" N, 69°14'35" W
(7) 40°22'25" N, 70°13'32' W
(8) 40°19'06" N, 73°04'56" W
(9) 40°18'54" N, 73°11'33" W
(10) 40°24'48" N, 73°41'28" W
(11) Then back to 40°28'15" N, 73°40'45" W

BILLING CODE 1505-01-M

Federal Highway Administration

National Motor Carrier Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on March 14, 1984, beginning at 9:00 a.m., in Washington, D.C., at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, D.C., Room 2230. The meeting is open to the public.

The agenda includes the following topics: uniformity of State regulation of interstate commercial motor vehicles; study of alternatives to the heavy truck use tax; GAO Report: "The Surface Transportation Assistance Act of 1982: The General Economic Effects on the Trucking Industry;" double bottom monitoring study; proposed research contract on the bridge formula; status of designation of truck routes; Motor Carrier Safety Assistance Program; proposed National Traffic Safety Administration; Bureau of Motor Carrier Safety seat belt use requirement and enforcement; National Highway Traffic Safety Administration truck break research; and American Trucking Association's brake activities.

FOR FURTHER INFORMATION CONTACT:
Mr. James J. Stapleton, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HCC-20, Room 4224, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426-0834. Office hours are from 7:45 a.m. to 4:15 p.m. et, Monday through Friday.

Issued on: February 15, 1984.
R. A. Barnhart,
Federal Highway Administrator, Federal Highway Administration.
[FR Doc. 84-4654 Filed 2-21-84; 8:45 am]
BILLING CODE 4910-22-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement on the North and South Extensions to the METROMOVER (People Mover) in Miami, Florida

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice to prepare and environmental impact statement.

SUMMARY: The Urdan Mass Transportation Administration (UMTA) and Metro-Dade Transportation Administration are undertaking the preparation of an Environmental Impact Statement (EIS) for the Extension to the METROMOVER system in Miami, Florida. This EIS is being prepared in conformance with 40 CFR Part 1500, Council on Environmental Quality Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 as amended; and 49 CFR Part 622, Federal Highway Administration and Urdan Mass Transportation Administration , Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT:
Mr. Ron Nawrocki, UMTA Region IV, 1720 Peachtree Road, N.W., Suite 400, Atlanta, Georgia 30309, (404) 881-7850.
Mr. Kiyoshi Mano, Metro-Dade Transportation Administration, 44 West Flagler Street, Miami, Florida 33130, (305) 579-4505.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

A public scoping meeting will be held on March 12, 1984 at 7:30 p.m. at James L. Knight Center, Hyatt Regency—Miami, 400 S.E. 2nd Avenue, Miami, Florida, to help establish the purpose, scope, framework, and approach for the environmental analysis. At the scoping meeting, staff will present a description of the proposed scope of the study using maps and visual aids, as well as a plan for an active citizen involvement program, a projected work schedule, and an estimated budget. Members of the public and interested Federal, State, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to

be analyzed, and evaluation criteria to be used to arrive at a decision. Comments may be made either orally at the meeting or in writing. Written comments must be submitted to MDTA within two weeks after the scoping meeting.

Project Description

The Miami Central Business District (CBD) is a rapidly growing area of mixed-use development, characterized primarily by office and retail space. This area forms the central core of a larger linear business district, which extends north to the Omni shopping district and south to the Brickell area. The METROMOVER system (formerly known as Downtown People Mover) has been under construction since 1982. It is a completly automated circulation/distribution system which will interface with the METRORAIL transit system at Government Center Station and provide imporved transportation in and around the Central Business District (CBD). The METROMOVER system consists of an elevated double lane guideway loop approximately 1.9 mile long. The system, which is scheduled for completion in 1984, includes ten on-line stations and will operate with driverless vehicles at approximately two minute headways.

Additional new and planned activity centers are beyond walking distance from METRORAIL and the METROMOVER loop; therefore, additional transportation services are required north to the Omni area and south to the Brickell area.

The northern extension would serve many important areas such as the Omni shopping complex, Plaza Venetia, new Marriott Hotel, Anna Brenner Meyer Educational Telecommunication Center, Miami Herald Publishing complex, Keyes Office complex, Bicentennial Park, a proposed residential town (Park West) and Freedon Tower. The southern extension would serve areas such as the Holiday Inn Hotel, Four Ambassadors Hotel, banking institutions, commercial office complexes, government offices, shopping plazas, high and low density residences and Brickell METRORAIL Station.

Alternatives

Transportation alternatives proposed for consideration are the following:

1. A "no build" alternative would utilize the existing bus fleet reconfigured in the downtown area to provide better coordination with the METROMOVER loop and METRORAIL.

2. A circulator bus alternative which would include dedicated buses providing circulator service in the downtown area; this alternative will also include transportation system management (TSM) improvements;

3. A rail transit alternative which could provide service north of the METROMOVER loop. The southern area would be served by extending the people mover system; and

4. A people mover alternative which would build the northern and southern extensions to the METROMOVER loop system.

Comments at the scoping meeting should focus on the appropriateness of these and other options for consideration in the study, not on individual preferences for a particular alternative as most desirable for implementation.

Probable Effects

Impacts proposed for analysis include changes in the natural environment, social environment, impacts on parklands and historic sites, changes in transit service and patronage, associated changes in street traffic congestion, capital costs, operating and maintenance costs and financial implications. Impacts on the natural environment consist of noise, air quality, water quality, removal of vegetations, visual effects and river crossings. Impacts on the social environment consist of changes in land use, development, neighborhood, displacements, relocation and growth induced effects. Impacts will be identified for short term construction period and for long term operation of the alternatives. The proposed criteria for evaluation include transportation, environmental, social, economic and financial measures as required by current Federal (NEPA) and State environment laws and current CEQ and UMTA guidelines. Mitigating measures will be explored for any adverse impacts that are identified.

Comment at the scoping meeting should focus on the completeness of the proposed set of impacts and evaluation criteria. Other impacts or criteria judged relevant to local decision-making should be identified.

Issued on: February 14, 1984.

James A. O'Connor,

Regional Administrator.

[FR Doc. 84-4624 Filed 2-21-84; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular; Public Debt Series—No. 5-84]

Treasury Notes of February 28, 1986; Series R-1986

Washington, February 16, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,250,000,000 of United States securities, designated Treasury Notes of February 28, 1986, Series R-1986 (CUSIP No. 912827 QM 7). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated February 29, 1984, and will bear interest from that date, payable on a semiannual basis on August 31, 1984, and each subsequent 6 months on February 28 and August 31 until the principal becomes payable. They will mature February 28, 1986, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:30 p.m., Eastern Standard time, Wednesday, February 22, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 21, 1984, and received no later than Wednesday, February 29, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

43.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. A noncompetitive bidder may not have entered into an agreement, or make an agreement with respect to the purchase or sale or other disposition of any noncompetitive awards of this issue in this auction prior to the designated closing time for receipt of tenders.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the bases of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in section 3.4., must be made or completed on or before Wednesday, February 29, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, February 27, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The Securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 4746 Filed 2-17-84; 1:52 pm]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Appointment of Certain Health Care Personnel

AGENCY: Veterans Administration.

ACTION: Public Notice and request for comment.

SUMMARY: The Veterans Administration is publishing notice for public review and comment of a proposed VA circular to implement the provisions of section 203 of Pub. L. 98–160, Veterans' Health Care Amendments of 1983, approved November 18, 1983. The proposed circular concerns veteran preference in the appointment of certified or registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses in DM&S (Department of Medicine and Surgery) under excepted authority of 38 U.S.C. 4104(3). Under section 203 of Pub. L. 98–160 (38 U.S.C. 4106(g)) the Administrator of Veterans Affairs may establish qualification standards for and authorize appointments to these positions without regard to civil service requirements. When using this appointment authority, however, the Administrator is required to apply the principles of preference for the hiring of veterans and other persons established in subchapter 1 of chapter 33, Title 5, United States Code.

DATES: Comments must be received on or before March 23, 1984.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed circular to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only at the Veterans Administration Central Office, Veterans Services Unit, Room 132, at the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Earl W. Koteen, Chief, Title 38 Health Care Personnel Division, Department of Medicine and Surgery, (202) 389–2033.

SUPPLEMENTARY INFORMATION: This publication contains a proposed VA circular entitled "Veteran Preference in the Appointment of Certain DM&S Health Care Personnel Under 38 U.S.C. 4104(3)." The proposed circular is to be implemented after public comments have been received. The final circular shall be effective on or before May 16, 1984, as required by section 203(b)(2) of Pub. L. 98–160.

Regarding section 203 of Pub. L. 98–160, the United States Senate Committee on Veterans' Affairs Report (Report No. 98–145, dated May 23, 1983, for Senate Bill 578) expressed the Committee's intent concerning veteran preference for appointments under authority of 38 U.S.C. 4104(3): "It is the Committee's intent, by requiring the application of veterans preference principles, that the Administrator, when applicants for a position are otherwise approximately equally qualified for a particular opening, will give the advantage to a veteran or other preference eligible and particularly so in the case of a veteran with a service-connected disability."

The policy contained in this proposed circular is not being proposed for inclusion in the Code of Federal Regulations since it regulates internal appointment practices within DM&S. In addition, it is related to Agency management and personnel matters and, as such, is generally exempt from the Administrative Procedures Act (5 U.S.C. 551, et seq.)

Dated: February 15, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Circular 00–84—Veteran Preference in the Appointment of Certain DM&S Health Care Personnel Under 38 U.S.C. 4104(3)

1. *Purpose.* To implement the provisions of section 203 of Pub. L. 98–160, Veterans' Health Care Amendments of 1983, approved November 18, 1983, concerning the application of veteran preference in the appointment of certified or registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses under excepted authority of 38 U.S.C. 4104(3) in DM&S (Department of Medicine and Surgey).

2. *Discussion.* Under section 203 of Pub. L. 98–160 (38 U.S.C. 4106(g)) the Administrator of Veterans Affairs may establish qualification standards for and authorize the above appointments without regard to civil service requirements. When using this appointment authority, the Administrator shall apply the principles of preference for the hiring of veterans and other persons established in subchapter 1 of chapter 33, Title 5, United States Code.

3. *Veteran Preference.* The following applies to appointments under authority of 38 U.S.C. 4104(3) in DM&S to the positions of certified or registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse. When eligible candidates for such appointment are determined to be approximately equally qualified for a particular opening, hiring preference will be given to veterans and preference eligibles, as defined in 5 U.S.C. 2108. Selections from among these candidates will be made in the following order:

a. Disabled veterans who have a service-connected disability of 10 percent or more.

b. Preference eligibles under 5 U.S.C. 2108(3) (C)–(G) other than those above.

c. Preference eligibles under 5 U.S.C. 2108(3) (A) and (B).

d. All other candidates.

[FR Doc. 84-4672 Filed 2-21-84; 8:45 am]

BILLING CODE 8320-01-M

State Veterans Cemetery, Exeter, Rhode Island; Finding of No Significant Impact

The Veterans Administration (VA), in cooperation with the State of Rhode Island, has determined that potential environmental impacts will be minimal from the development of a State Veterans Cemetery in Exeter, Rhode Island.

The proposed project consists of the expansion, construction, and development of burial areas, main entrance, road system utilities, drainage, sprinkler system, committal service shelter, crypt, maintenance complex, and an Administrative and Information Center. This construction will reflect the first phase of master plan development of the 180 acres of State land. The State cemetery commenced operation as a veterans cemetery in 1974 and has received over 2,000 interments. The proposed development has been designed and will be constructed and administered by the State of Rhode Island similarly to the VA National Cemetery System.

Temporary impacts will occur associated with the construction of the proposed action. It is anticipated that these impacts will be mostly fugitive dust and raised noise levels from construction activities. These impacts are temporary and should not have a significant effect on the surrounding environment.

A permanent impact will be the change to land use and commitment of the site in perpetuity for the burial of eligible veterans and their dependents.

Temporary impacts from construction will be mitigated so as to incur minimal disruption to the environment. During the construction phase and subsequent operation, all applicable Federal, State, and local regulations and codes will be adhered to. Mitigation actions that would be instituted include erosion, air quality, and noise level controls, as well as approved solid waste disposal measures.

The VA had obtained information from the Rhode Island State Historic Preservation Officer (SHPO) that significant archaeological remains might be located in the probable area of impact of the proposed action.

The VA, in consultation with the Rhode Island SHPO, has identified and evaluated the archaeological resources that may be affected by the cemetery expansion and the construction of a new access roadway. This included a background study of the landforms and land use history of affected areas where significant historic or prehistoric archaeological objects might exist. In addition, a field reconnaissance survey and subsurface testing, in order to meet predictions derived from the background research, has been conducted. Information gathered has been evaluated according to the criteria of eligibility for inclusion in the National Register of Historic Places as set forth in 36 CFR Part 60. One site was determined eligible. Planning was modified to avoid disturing the site. Should any other archaeological resources be discovered during the construction, the State will notify the VA immediately and the work will be directed away from that area until the resources can be evaluated.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity so defined by the Council on Environmental Quality, 40 CFR 1508.27.

The Environmental Assessment has been prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) Regulations 1501.3 and 1508.9. A Finding of No Significant Impact has been reached based on the information in the assessment and VA compliance with the National Historic Preservation Act. The results of the assessment are available for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue N.W., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: February 15, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 4671 Filed 2-21-84; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Boards; Charter Renewals

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), the Veterans Administration announces renewal of the following Merit Review Boards in designated medical specialties for the period February 6, 1984 through February 6, 1986:

Merit Review Board for Basic Science Programs
Merit Review Board for Cardiovascular Programs
Merit Review Board for Clinical Pharmacology, Alcoholism and Drug Dependence Programs
Merit Review Board for Endocrinology Programs
Merit Review Board for Gastroenterology Programs
Merit Review Board for Hematology Programs
Merit Review Board for Immunology Programs
Merit Review Board for Infectious Disease Programs
Merit Review Board for Mental Health and Behavioral Science Programs
Merit Review Board for Nephrology Programs
Merit Review Board for Neurobiology Programs
Merit Review Board for Oncology Programs
Merit Review Board for Respiration Programs
Merit Review Board for Surgery Programs.

New charters for these committees have been filed in accordance with sections 9 and 14 of Pub. Law. 92-463.

Dated: February 14, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-4670 Filed 2-21-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 36
Wednesday, February 22, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 15, 1984.

TIME AND DATE: 10:00 a.m., Thursday, February 23, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Monterey Coal Company, Docket No. HOPE 79-323-P; Petitions for Interlocutory Review. (Issues include whether the Commission's Administrative Law Judge erred in granting the Secretary of Labor's motion to join an independent contractors as a party respondent in the proceeding.)
2. Secretary of Labor on behalf of John Cooley v. Ottawa Silica Co., Docket No. LAKE 81-163-DM. (Issues include whether the judge erred in concluding that the operators discharge of the miner violated the Mine Act and whether the judge granted appropriate remedial relief.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean Ellen,

Agenda Clerk.

[FR Doc. 84-4695 Filed 2-16-84; 4:41 pm]

BILLING CODE 6735-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m. Monday, February 27, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System and establishment of emergency computer backup.
2. Issues relating to Federal Reserve notes. (This item originally announced for a closed meeting on February 2, 1984.)
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any item carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 17, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4756 Filed 2-17-84; 2:20 pm]

BILLING CODE 6210-01-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-11]

TIME AND DATE: 2:30 p.m. Monday, February 27, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   a. Rotary wheel printers (Docket No. 1025).
   b. Tennis rackets (Docket No. 1021).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-4793 Filed 2-17-84; 3:38 pm]

BILLING CODE 7020-02-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-12]

TIME AND DATE: 3:00 p.m., Tuesday, February 28, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Investigation 731-TA-123 [Final] (Carbon Steel Products from Brazil)—briefing and vote.
2. Investigation 337-TA-140 (Personal Computers)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-4794 Filed 2-17-84; 3:38 pm]

BILLING CODE 7020-02-M

5

INTERNATIONAL TRADE COMMISSION, EXECUTIVE RESOURCES BOARD (ERB)

[USITC ERB-84-2]

TIME AND DATE: 11:00 a.m., Wednesday, February 29, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Issues:

1. Executive Development Program Individual Development Plans.
2. Executive Development Program Evaluation.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-4792 Filed 2-17-84; 3:38 pm]

BILLING CODE 7020-02-M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-13]

TIME AND DATE: 11:00 a.m., Thursday, March 1, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Petitions and complaints:
   a. Glass construction blocks (Docket No. 1027).
2. Investigation 731-TA-165 [Preliminary] (Valves, Nozzles, and Connectors of Brass from Italy)—briefing and vote.
3. Investigation 337-TA-133 (Certain Vertical Milling Machines and Parts, Attachments and Accessories Thereto)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–4795 Filed 2–17–84; 3:38 pm]

BILLING CODE 7020–02–M

7

INTERNATIONAL TRADE COMMISSION

[USITC SE–84–14]

TIME AND DATE: 9:30 a.m., Tuesday, March 6, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 701–TA–210 and –211 and 731–TA–167 and –168 [Preliminary] (Table Wine from France and Italy)—briefing and vote.
6. Investigation 731–TA–130 [Final] (Chloropicrin from the People's Republic of China)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–4796 Filed 2–17–84; 3:38 pm]

BILLING CODE 7020–02–M

8

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:30 a.m., Wednesday, February 29, 1984.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. *James Johnson* v. *Department of Health and Human Services,* MSPB Docket No. PH07528110407.
2. *James Abrams* v. *Department of the Navy,* MSPB Docket No. PH07528110312.
3. *Benjamin Harrison* v. *Department of the Treasury,* MSPB Docket No. DC07528110622.
4. *James Honeycutt* v. *Department of Labor, Mine Safety and Health Administration,* MSPB Docket No. AT07528210386.
5. *Louis Hoffer* v. *Department of Commerce,* MSPB Docket No. SE03518210043.
6. *Neda Taylor* v. *Department of Transportation,* MSPB Docket No. DC03518180788.
7. *Special Counsel* v. *Guadalupe Saldana,* MSPB Docket No. HQ12068210023.
8. *Mabel P. Gibson* v. *Department of the Navy,* MSPB Docket No. AT07528211006.
9. *David Kulling* v. *Department of Transportation,* MSPB Docket No. CH07528210378.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Secretary, (202) 653–7200.

For the Board:

Dated: February 16, 1984, Washington, D.C.

Robert E. Taylor,

Secretary.

[FR Doc. 84–4699 Filed 2–17–84; 9:46 am]

BILLING CODE 7400–01–M

9

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors.

TIME AND DATE: 9:00 a.m. (closed portion), 10:00 a.m. (open portion) Tuesday, February 28, 1984.

PLACE: Offices of the Corporation, seventh floor Board room, 1129 20th Street NW., Washington, D.C.

STATUS: The first part of the meeting from 9:00 a.m. to 10:00 a.m. will be closed to the public. The open portion of the meeting will start at 10:00 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 9:00 a.m. to 10:00 a.m.).

1. Insurance Project in African country.
2. Insurance Project in Caribbean country.
3. Insurance Project in East Asian country.
4. Claims Report.
5. Information Report: Finance.
6. Information Reports: General.
7. Information Report: China Projects.

FOR FURTHER MATTERS TO BE CONSIDERED: (Open to the public 10:00 a.m.).

8. Approval of the Minutes of the Previous Board meeting.
9. Approval of proposed Regular Meetings of the Board.
10. Insurance: Increased Coverage for Existing Insureds.
11. Personnel Actions.
12. Treasurer's Financial Statements.
13. Increase of Direct Investment Fund for FY 1984.
14. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation at (202) 654–2953.

Elizabeth A. Burton,

Corporate Secretary.

February 16, 1984.

[FR Doc. 84–4700 Filed 2–17–84; 10:20 am]

BILLING CODE 3210–01–M

10

PAROLE COMMISSION

Pursuant To The Government In The Sunshine Act—Pub. L. 94–409 (5 U.S.C. 552b).

TIME AND DATE: 1:00 p.m., Friday, February 24, 1984.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, and over a conference telephone circuit.

STATUS: Open.

MATTERS: The following changes are proposed in the guidelines (28 CFR 2.20) to increase the sanctions for large scale cocaine offenses.

(a) 15 kg. or more of 100% purity, or equivalent—Category 8.
(b) 5–14 kg. of 100% purity or equivalent—Category 7.
(c) If peripheral role under (a) and (b)—Category 6.
(d) More than 1–4 kg. of 100% purity or equivalent—Category 6.
(e) If peripheral role under (d)—Category 5.

The street value chart is to be changed to $800,000 per kg. of 100% purity or equivalent. Changes in narrative labels and in language in other parts of the guidelines will be made to conform to the above.

CONTACT PERSON FOR MORE INFORMATION: James Beck, Assistant Director of Research, United States Parole Commission, Telephone: 492–5980.

Dated: February 16, 1984.

Joseph A. Barry,

General Counsel, Parole Commission.

[FR Doc. 84–4757 Filed 2–17–84; 2:28 pm]

BILLING CODE 4410–01–M

federal register

Wednesday
February 22, 1984

Part II

Commodity Futures Trading Commission

17 CFR Part 12

Final Rules Relating to Reparations

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Final Rules Relating to Reparations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: On January 11, 1983, Section 14(b) of the Commodity Exchange Act, 7 U.S.C. 18(b), was amended to authorize the Commodity Futures Trading Commission to promulgate rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of its reparations program. Pursuant to Section 14(b)'s grant of authority, the Commission is adopting final rules which effect changes to its existing reparation procedures in order to streamline and simplify the entire reparation process.

DATES: Effective April 23, 1984. This Part shall apply in its entirety to all reparation complaints, and all matters relating thereto, filed on and after April 23, 1984. Sections 12.14, 12.21, 12.22, 12.23, 12.24 and 12.408 of this Part shall apply to all reparation matters, including those pending on April 23, 1984, regardless of when the reparation complaint was filed. Subpart F of this Part shall apply to all proceedings in which initial decisions, or similar dispositive orders, are served on and after April 23, 1984. Except as indicated above, this Part shall not apply to reparation complaints filed before April 23, 1984, except that parties to a formal adjudicatory proceeding commenced pursuant to any such complaint may, at any time before the initial decision is rendered, by written stipulation executed by all parties, elect to have the case heard pursuant to Subpart C of this Part. To the extent that this Part does not apply to any matter on the Commission's reparations docket pending on April 23, 1984, 17 CFR Part 12 (1983) shall apply.

FOR FURTHER INFORMATION CONTACT: Edward S. Geldermann, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-9880.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 1983, Section 14(b) of the Commodity Exchange Act, 7 U.S.C. 18(b) was amended, effective May 11, 1983,[1] to authorize the Commission to:

> promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing, and service of pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

Futures Trading Act of 1982, Pub. L. No. 97-444, section 231, 96 Stat. 2294, 2319, 7 U.S.C. 18(b) (1982).[2]

Pursuant to Section 14(b)'s authorization, the Commission on February 15, 1983, published an advance notice of proposed rulemaking, indicating that it was considering making the following major changes to its reparation procedure: Instituting a voluntary decisional procedure, analogous to commercial arbitration, that would result in an expeditious, final, and unappealable decision; raising to $10,000 the monetary ceiling for damage claims that could be heard pursuant to the Commission's summary procedure; creating the position of "Proceedings Officer," an employee of the Commission who would assist the discovery functions of Administrative Law Judges; and dismissing reparation proceedings or respondents because of the pendency of related civil litigation, arbitration, receivership or bankruptcy proceedings.

After analyzing comments received concerning the advance notice, the Commission on May 24, 1983, adopted proposed Reparation Rules which incorporated essentially all of the concepts featured in its advance notice. On June 6, 1983, the Commission published in the **Federal Register** a notice of the availability of these proposed rules in which it invited public comment on the rules as proposed and suggestions for any other changes that would improve and expedite the reparation procedure. 48 FR 25218 (1983). In response to this invitation for public comment, the Commission received letters of comment from Robert K. Wilmouth, on behalf of the National Futures Association ("NFA"); John W. Damgard, on behalf of the Futures Industry Association; William J. Nissen, on behalf of Heinold Commodities, Inc.; Eric G. Lipoff, on behalf of Monex International Ltd.; William E. McDonnell, on behalf of Drexel Burnham Lambert, Inc.; Michael J. Hogan, on behalf of Shearson/American Express, Inc.; M. Van Smith; H. Richard Mayberry, Jr.; William O. Hoar; Leslie A. Blau, on behalf of Maduff & Sons, Inc.; and James L. Fox.

The Commission has since considered the comments in these letters as well as other suggestions for improvements in the reparations process, and has determined to adopt final rules which amend, in their entirety, the formerly existing Part 12 Reparation Rules.

II. Summary of Changes to Proposed Rules Adopted In Final Reparation Rules

In its final rules the Commission has adopted numerous changes to its proposed rules which incorporate comments received from the public as well as other suggestions for improving or expediting the reparations process. Concerning practice in the reparations forum, the Commission has amended its proposed rules to allow parties five days, instead of three as proposed, to respond to a document served upon them when service is effected by mail. The Commission has also increased the time allowed for responding to motions to amend or supplement the pleadings and for filing an application for interlocutory review, from five to ten days, and for filing an answering brief on appeal, from twenty to thirty days.

In the final rules, the Commission has reduced, from seven to five, the number of days in advance of the expiration of a time limit within which a party must file a motion for extension of the time limit. The Commission has also reduced, from two to one, the number of copies of a filed document that must be served on other parties. Finally, the Commission has modified its proposed rule which required documents, in order to be considered timely filed, to be received by the Proceedings Clerk within the time prescribed for filing. Instead, when the filing is effected by mail, a document need only be deposited in the mail within the time prescribed for filing, to be considered timely filed.

Concerning the content requirements for pleadings, the Commission has determined not to adopt its proposed

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[1] Futures Trading Act of 1982, Pub. L. No. 97-444, section 239, 96 Stat. 2294, 2327 (1983).

[2] Section 14(a) of the Act was also amended to repeal the Commission's jurisdiction over those persons who, although not registered under the Act, had engaged in activities requiring them to be registered. Amended Section 14(a) of the Act, 7 U.S.C. § 18(a), authorizes the filing of reparation complaints only for violations of the Commodity Exchange Act, or of any regulation or order issued thereunder, committed by any person registered under the Act.

rules which would have required parties at the time of filing their initial pleadings to attach copies of all documentary proof and affidavits of witnesses which the parties intended to rely upon in establishing their claims or defenses. The content requirements for a complaint, answer and reply, as adopted in the final rules, are now similar to those in effect under the Commissioner's former reparation rules. The Commission has also reduced, from $250 to $200, the non-refundable filing fee that must be paid for the formal decisional procedure.

In its final rules, the Commission has also adopted substantial modifications to its proposed rules concerning discovery. Under the proposed discovery procedure, parties seeking discovery could only apply to the decisionmaker (or, if the formal decisional procedure had been elected, a proceedings officer) for an order compelling other persons to produce documents, affidavits, responses to interrogatories, which the applying party could suggest to the decisionmaker. The decisionmaker would have the authority to accept or reject, in whole or in part, any such application for a discovery order. In the final rules, the Commission adopted a discovery procedure which allows parties, without leave of a decisionmaker, to conduct limited discovery within sixty days after a reparation proceeding had commenced. The methods and procedure would be virtually the same as utilized under the Commission's former reparation rules, except that, in a formal decisional proceeding, discovery-related motions would be decided by a Proceedings Officer. Any discovery-related ruling by a Proceedings Officer would be appealable to an Administrative Law Judge. Costs would be awardable as sanctions for an abuse of discovery.

In the Commission's final rules applicable to voluntary decisional proceedings, the Commission has determined not to adopt its proposed rules which would have granted a Judgment Officer the authority to conduct pre-decision conferences, to conduct discovery on his own motion, and to conduct oral examination of parties and their witnesses. All proof in a voluntary decisional proceeding would be required to be submitted in documentary form. The Commission has also adopted a rule which provides that a finding that a respondent violated the Act in a final decision rendered pursuant to the voluntary decisional procedure shall not be deemed a finding of the Commission for the purposes of Section 8a of the Commodity Exchange Act.

The proposed rules concerning the summary decisional procedure would have permitted a Judgment Officer to conduct oral examination of the parties and their witnesses in Washington, D.C., or by telephone, only if issues of critical importance existed which required for their resolution credibility determinations to be made. Examination by a party or his counsel would have been prohibited. In the final rules, a Judgment Officer has been afforded somewhat broader discretion to permit oral examination of parties and to allow such oral examination, including cross examination, to be conducted by the parties. The Commission has also determined not to allow parties to file proposed findings of fact and conclusions of law memoranda in a summary decisional proceeding.

In cases involving the formal decisional procedure, the Commission proposed to allow a Proceedings Officer, before a proceeding had commenced, to conduct discovery on his own motion, to conduct pre-decision conferences, to rule on motions for dismissal, and to make recommendations to an Administrative Law Judge concerning the need for an oral hearing to resolve issues of credibility, and, if no oral hearing was determined to be necessary, to make recommendations to the Administrative Law Judge concerning findings of fact and conclusions of law. In its final rules, the Commission has determined not to vest the Proceedings Officer with any of the foregoing authorities other than the authority to conduct pre-decision conferences. The final rules also vest a Proceedings Officer with authority, unless otherwise directed by the Administrative Law Judge assigned to decide the case, to rule upon discovery-related motions filed within sixty days after the proceeding commenced.

Also in its final rules applicable to formal decisional proceedings, the Commission has enlarged, from twelve to twenty, the number of cities in which oral hearings may be held. The final rules also make oral hearings, including oral direct examination, generally available to parties without requiring an Administrative Law Judge to first find that important issues of credibility exist.

In its final rules applicable to appeals, the Commission has eliminated its proposal to require parties to file an appeal bond if they were ordered to do so in the initial decision. The final rules require appealing parties to pay a $50 appellate filing fee at time of filing a notice of appeal, rather than at the time of filing an appeal brief as proposed, and eliminate the proposed reconsideration procedure which would have followed the Commission's issuance of a final reparation decision. Finally, the Commission in its final rules has delegated authority to the Chief of its Opinions Section to: Rule upon miscellaneous procedural motions after an initial decision has been filed; to remand proceedings where a motion to vacate a default judgment has been filed, where the initial decision is in need of clarification, and where a ministerial act necessary for the proper conduct of the proceeding has not been performed; to deny applications for interlocutory review and to dismiss appeals under strictly limited circumstances; and to strike any filing that does not meet the requirements of the reparations rules. Any action by the Chief pursuant to this rule would be subject to reconsideraton by the Commission upon motion by a party filed within 7 days after service of notice of such action.

III. The Commission's Final Reparation Rules

A. Definitions

The final reparation rules feature three distinct decisional procedures, each of which varies from one another in terms of probable length of time necessary to reach a decision. The most expeditious of these procedures is a low-cost, entirely new "voluntary decisional procedure," defined in § 12.2(l), and is a procedure which the complainant and the respondent have chosen voluntarily to submit their claims and counterclaims in documentary or tangible form for an expeditious resolution by a Commission decisionmaker. By electing the voluntary decisional procedure, parties agree to waive whatever right they might otherwise have had to a decision accompanied by findings of fact and conclusions of law, and agree that the decision rendered shall be final without right of Commission review and judicial review. The filing fee for the procedure is $25. A decision pursuant to the voluntary procedure can be expected within six months after the complaint is filed.

An alternative to the voluntary procedure is the summary decisional procedure, defined in § 12.2(k), which is available to parties where the amount of damages claimed or counterclaimed does not exceed $10,000 and one of the parties does not elect the voluntary procedure. The filing fee for the summary decisional procedure is $100.

The rules governing the summary decisional procedure parallel to some degree the Commission's former summary proceedings rules, except insofar as they vest the decisionmaker with discretion to permit limited oral cross examination. An initial decision rendered pursuant to the summary decisional procedure will contain a brief statement of findings and conclusions, and is appealable to the Commission, whose decision is thereafter subject to judicial review pursuant to Section 14(e) of the Act. Because of the additional time needed to prepare a decision with findings and conclusions, an initial decision pursuant to the summary decisional procedure can be expected within nine months after the complaint is filed.

As a separate alternative to the voluntary decisional procedure, the formal decisional procedure (defined in § 12.2(j)) is available to parties only where the amount of damages claimed or counterclaimed exceeds $10,000, at least one of the parties does not elect the voluntary procedure, and a filing fee of $200 is paid. A formal decisional proceeding, if commenced, affords parties the opportunity for a more traditional administrative trial-type procedure, *i.e.*, an oral hearing before an Administrative Law Judge, an opportunity to orally cross examine other parties and witnesses, an initial decision by an Administrative Law Judge containing findings and conclusions, and the right to appeal the initial decision to the Commission, whose decision may subsequently be appealed to a United States Court of Appeals. Because of the greater amount of time needed to conduct an oral hearing, an initial decision pursuant to the formal decisional procedure can be expected within one year after the complaint is filed. The Commission has received numerous comments from the public concerning the features of the voluntary, summary, and formal decisional procedures, and these comments will be addressed at length, *infra*, where the specific rules applicable to each of the decisional procedures are discussed in more detail.

In its new rules, the Commission has consolidated its organizational units responsible for administering various procedures under the former reparation rules by creating a new "Office of Proceedings." Defined in § 12.2(p) of the rules, the Office of Proceedings is an office charged with the responsibility for generally administering all of the reparation rules, except those concerning direct review by the Commission. Thus, the functions previously performed by the Complaints Section, the Hearing Clerk's office, and by the Commission's Office of the Administrative Law Judges under the Commission's former reparation procedures are now centralized in one office. The newly adopted rules also include definitions of the "Director of the Office of Proceedings," "Judgment Officer," "Proceedings Officer," and the "Proceedings Clerk," which describe positions to be occupied by employees of the Commission who are assigned responsibilities which are key to the efficient administration of several facets of the new reparation procedure.

In creating the position of "Director of the Office of Proceedings," the Commission has determined to designate one of its staff members to serve as the administrative head of that office with supervisory authority over all personnel in the office other than the Administrative Law Judges and their personally assigned law clerk. In addition to the specific functions assigned to the Director by the rules, which relate to the preliminary consideration of the pleadings and the approval of travel itineraries for the Administrative Law Judges, the Director through § 12.2(h) of the rules is vested with plenary administrative authority and responsibility to assure that the reparation rules are administered in an efficient and expeditious manner. To that end, the Director has been granted authority to assign cases and to assign, and, if necessary or appropriate, reassign the duties of, and to establish reasonable standards of performance for, all personnel in the Office of Proceedings other than the Administrative Law Judges and their personally assigned law clerk. The Director also is authorized to convene, and preside over, meetings of all personnel in the Office of Proceedings.

Concerning this proposed authority to be vested in the Director of the Office of Proceedings, several commentors indicated that any such position should be vested with far greater authority over the Administrative Law Judges, including the authority to assign and schedule cases, the authority to set deadlines for the issuance of initial decisions and rulings on motions, and the authority to require the judges to submit regular reports to the Director concerning their progress in conforming to specific performance standards established by the Director. The Commission does not believe that the Director should have the authority to establish performance standards for Administrative Law Judges, to schedule their cases, or to set deadlines for initial decisions and other rulings.[3]

The definition of "Judgment Officer" in § 12.2(o) contemplates a Commission employee conducting the proceeding and rendering a decision pursuant to the voluntary decisional procedure and the summary decisional procedure.[4] The concept of utilizing a Commission employee to hear and decide certain kinds of cases is not new to the Commission's reparation program.[5] The Commission believes that utilizing Judgment Officers, coupled with instituting the voluntary decisional procedure and raising the monetary ceiling for claims that can be heard pursuant to the summary decisional procedure, will increase the likelihood of more expeditious disposition rates and the overall efficiency of the reparations program, as it will ultimately reduce the number of backlogged reparation cases assigned to Administrative Law Judges, who must hear and decide enforcement cases in addition to reparation cases.

To further relieve the burdens on Administrative Law Judges and to expedite discovery in cases conducted pursuant to the formal decisional procedure, the Commission has created the position of "Proceedings Officer," defined in § 12.2(w), to be occupied by an employee of the Commission, who will have the initial responsibility for deciding discovery-related disputes that may arise between parties to a formal decisional proceeding, and who will be assigned default cases.[6] The "Proceedings Clerk," defined in § 12.2(x), is an employee who, acting under the supervision of the Director, is responsible for maintaining the official

[3] We also appreciate that there may be due process notions implicit in the degree of independence from agency control that Administrative Law Judges are afforded by Section 3105 of Title 5, United States Code. We do regard the Director's supervisory authority, however, to include inherently the authority to require the Administrative Law Judges to submit regular reports concerning their dispositions of reparation cases.

[4] Section 12.2(o) also acknowledges that an Administrative Law Judge may, in appropriate cases, be called upon to perform these same duties. In such a situation, the Administrative Law Judge would continue to exercise the degree of independence from agency control that is afforded by 5 U.S.C. 3105.

[5] Under the Commission's former reparation procedures, proceedings in which the amount of damages claimed did not exceed $5,000 ($2,500 before October 1, 1978) could be heard and decided by a Presiding Officer who could be, *inter alia*, a Commission employee. *See, e.g.* 17 CFR 12.3(o) (1983).

[6] Many comments were received concerning the advisability of creating this position and those comments are addressed, *infra*, where the specific rules pertaining to the Proceedings Officer are discussed in greater detail.

docket in reparation cases, acting as custodian of the records in reparation matters, and assigning reparation cases to a decisionmaking official. In addition, the Proceedings Clerk is responsible for notifying one or more of the parties of any action taken by the Director pursuant to §§ 12.15, 12.24, 12.26, and 12.27 of the rules, or of any order entered in a reparation matter. The Proceedings Clerk is also responsible for issuing orders, to accompany notification of the commencement of a reparation proceeding, requiring parties to complete discovery within sixty days thereafter.

The terms "complaint" and "counterclaim" are defined in § 12.2 (f) and (g), respectively. Section 12.2(f) makes clear that any filing which fairly constitutes an application for a reparation award may be treated as a complaint, even though the document is not denominated as such. The Commission received several comments recommending that the scope of terms "complaint" and "counterclaim" be expanded to include third-party claims such as impleader and cross claims. While the Commission believes that it has the authority to permit third party practice in the reparations forum, at least where a third party respondent is a registrant, it nevertheless believes that the adoption of third party practice at this time would frustrate Congress' goal of making reparations a more simplified and expeditious procedure.

The allowance of third party claims would cause delay to recovery by complainants in several ways. The filing of a third party claim by a respondent will in the vast majority of cases coincide with the filing of an answer, which pursuant to Section 12.16 of the rules may be filed as late as 45 days after the complaint is forwarded. This, in turn, would require additional time by the Office of Proceedings to review the third party claim to determine whether it is properly the subject of a reparations complaint (and, if the claim is impleaded, more time would be needed by that office to accomplish service). Thereafter, a new 45 day period would run for the third party respondent to settle or file an answer. There would be obvious additional delays if the third party respondent's answer contained counterclaims. From the decisionmaking perspective, the allowance of third party claims would delay recovery to complainants unnecessarily in cases where the issue of the liability of at least one of the respondents to the complainant could be resolved simply and readily, but the added question of liability as between co-respondents involves complicated factual or legal issues requiring a much greater commitment of time for resolution.

The Commission is cognizant that the reparations program was created by Congress primarily as a forum for aggrieved customers seeking redress for losses caused by violations of the Act committed by commodity professionals. *See, e.g.*, H.R. Rep. No. 975, at 22, 93d Cong., 2d Sess. (1974). For this reason, and because Congress by vesting the Commission with plenary authority to refashion its reparation procedures intended the Commission to eliminate unnecessary delays to recovery by commodity customers,[7] the Commission has determined not to adopt third party practice for its reparation procedures. The definitions of "complainant" and of "counterclaim" in § 12.2 (e) and (g) therefore make it clear that third party impleader or cross claims are not cognizable in reparations.

The term "registrant" is defined in § 12.2(y) and enumerates only those classes of individuals or entities which are amenable to suit in reparations. Consistent with an extant Commission interpretation of Section 14(a) of the Act,[8] § 12.2(y) defines "registrant," *inter alia*, as an individual or entity registered under the Act at the time of the alleged violation. Section 12.2(y) also acknowledges as another class of "registrant" persons who, regardless of their registered status under the Commodity Exchange Act, have been specifically made subject to reparations by Section 4m of the Act. Finally, § 12.2(y) recognizes that there may be other classes of persons who, although not registered under the Act, are subject to reparation proceedings and these classes would fall within the "otherwise subject to reparation proceedings" language of § 12.2(y).[9]

Finally, the term "proceeding" is defined in § 12.2(v) as "a case in which the pleadings have been forwarded, and in which a procedure has been commenced pursuant to § 12.26(a), (b), or (c)." This definition is intended to make clear that a complainant and a respondent are not participants in a reparation proceeding unless and until the Director of the Office of Proceedings takes action pursuant to § 12.26 of the rules. Until such action is taken, the pleadings are regarded as merely under consideration by the Office of Proceedings, and, among other things, the prohibitions of § 12.7 against *ex parte* communications, the discovery rules of Subpart B, and the right to have a case heard pursuant to an elected decisional procedure do not apply. The appealability of reparation orders also depends, *inter alia*, upon whether a "proceeding" has commenced pursuant to § 12.22 or § 12.26 (a), (b),or (c).[10] Thus, a determination made by the Director of the Office of Proceedings not to forward the complaint pursuant to § 12.15 or not to take action pursuant to § 12.26, which would necessarily precede the commencement of a "proceeding," is not appealable to the Commission or, in the Commission's view, to a U.S. Court of Appeals pursuant to Section 14(e) of the Act.

B. Practice in the Reparations Forum

The new rules contain some significant modifications to the Commission's former rules relating to the time allowed for responding to specific motions, motions for extension of time, service, filing of documents with the Proceeding Clerk, withdrawal of representation by counsel, and the prohibitions against *ex parte* communications. In the final rules, the Commission has enlarged, from five to ten days, the time allowed for parties to respond to motions to amend or supplement the pleadings, to apply for interlocutory review, and, from twenty to thirty days, to file an answering brief in an appeal to the Commission.

In its proposed rules, the Commission proposed to require parties who needed an extension of a time limit on action to be taken concerning any matter to file a motion therefor at least seven days prior to the expiration of the time limit. Comments received concerning this proposed rule indicated that very often the parties cannot foresee that they will need an extension of time until immediately prior to the expiration of the time limit, and therefore, the final rules should not require any advance filing of motions for extension of time. Given that, in most instances, parties have a ten day time limit within which to take action in a reparation proceeding, and because the Commission, based on its experience, believes that a party will generally be able to foresee the need for an extension at least five days prior to the deadline of the time limit, the Commission has determined to adopt § 12.6(b) which

[7] *See* H.R. Rep. No. 565, Pt. 1, at 56; H.R. Rep. No. 565, Pt. II, at 32, 97th Cong., 2d Sess. (1982); S. Rep. No. 384, at 48, 97th Cong., 2d Sess. (1982).

[8] See 48 FR 21923 (1983).

[9] For instance, those who have willfully aided and abetted a registrant's violation may be subject to reparation proceedings. See S. Rep. No. 384, at 48, 97–98, 97th Cong., 2d Sess. (1982).

[10] There may be situations in which, even though a proceeding had commenced pursuant to § 12.26 (a), (b), or (c), an order terminating the proceeding would not be appealable to the Commission. See § 12.24 of the Rules.

requires the filing of motions for extension five days in advance of the expiration of the time limit absent extraordinary circumstances. Truly unforeseeable and pressing conditions would likely constitute extraordinary circumstances which would relieve the moving party from the five day advance filing requirement of § 12.6(b).

The Commission's proposed rules provided that two copies of all motions and other memoranda, other than a complaint, made in the course of a proceeding shall be served on other parties. Service could be effected by making personal delivery or by first-class mail. Under the proposed rules, when service of any document was effected by first-class mail, the time within which the person served could respond thereto would be increased by three days. The proposed rules also required all documents served to be filed concurrently with the Proceedings Clerk. Under the proposed rules, to be timely filed a document was required to be received within the time prescribed for filing.

Concerning the proposed rule requirement that two copies of all documents be served on other parties, several commentors expressed a view that there was no need for two copies of each document to be served, and that the rule would add an unwarranted expense to a reparation proceeding. While the proposed two copies service requirement was originally intended to supply a served party's counsel with a copy in addition to a copy for the represented party, the Commission has reconsidered this rule and has decided that the party making service should not have to bear the cost of providing an additional copy for this purpose. Accordingly, the proposed requirement of two copies has been abandoned, and § 12.10(a)(1) of the reparation rules now requires only one copy of documents to be served.

Although no comments were received concerning the Commission's proposal to allow three additional days to the time required for a response to a document that has been served by mail, the Commission reconsidered whether the three day period accurately reflects the average time that it takes the United States Postal Service to transmit a piece of mail first-class from point of origin to destination. Recognizing that in some instances the delivery of first-class mail may take longer than three days, the Commission in adopting § 12.10(b) has determined to enlarge to five days the time for responding to a document that has been served by mail.

The Commission also received comments indicating that it should not adopt the proposed rule which required a document, in order to be considered timely filed, to be received within the time prescribed for filing. These commenters indicated that no one can control when a document is received by the Proceeding Clerk, citing the unreliability of the mails as a potential problem in this regard. The Commission agrees that it is beyond the parties' control to assure that a document that has been deposited in the mail is received by the Proceedings Clerk within the time prescribed for filing. Therefore, in accordance with these commentors' suggestions, the Commission has adopted § 12.10(a)(2) which provides, *inter alia*, that to be timely filed a document must be mailed by first-class mail, within the time prescribed for filing.[11]

The proposed rules also imposed restrictions on the withdrawal from representation by counsel to a party to a reparation proceeding. The Commission has experienced problems in the past in cases where a party's attorney has withdrawn from representation without providing adequate notice to the party that he is thereafter expected to act *pro se* in the reparation proceeding, and without making adequate provision thereafter for documents to be served directly on the party rather than on the counsel who has withdrawn. To remedy this problem, the Commission has adopted § 12.9(c) which provides that withdrawal for representation of a party shall be only by leave of the official (or the Commission) before whom the matter is then pending. Section 12.9(c) further provides that leave to withdraw may be conditioned on the withdrawing counsel's submission of an affidavit stating that the represented party has actual knowledge of the withdrawal, and either (1) that the party has determined to proceed *pro se*, in which case the party's address for service shall be provided, or (2) that a successor counsel has been retained, in which case that counsel's name and address for service shall be provided.

Although Section 14(b) of the Act has exempted the Commission from the adjudicatory procedural constraints of the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557, in fashioning its reparation procedures, the Commission nevertheless has determined to retain its prohibitions against *ex parte* communications to insure fairness to the parties. Section 12.7, which contains the general prohibitions, does not apply to all *ex parte* communications. Rather, they apply to only those communications that are relevant to the merits of a proceeding. Furthermore, §12.2(i) excludes from the definition of "*ex parte* communication": (1) a discussion, after consent has been obtained from all parties, between a party and the decisionmaker, or a staff member thereof, pertaining solely to the possibility of settling the case; (2) requests for status reports and service- or registration-related questions; and (3) requests for interpretations of the reparation rules. Finally, as discussed earlier, the *ex parte* communication rule does not apply unless and until a "proceeding" has commenced pursuant to Section 12.26 of the rules. Therefore, until the Director of the Office of Proceedings takes action pursuant to § 12.26, no discussion or written commnication between a potential participant to a reparation proceeding and a staff member of the Office of Proceedings, or any other Commission employee, shall be deemed a prohibited *ex parte* communication.

C. Content Requirements and Preliminary Consideration of the Pleadings

In its proposed rules, the Commission prescribed content requirements that would have imposed upon complainants a duty to provide more information in, or accompanying, their complaints than was required by the former reparation rules, so that a more complete factual records would be made at a very early stage of the proceeding. Thus, the Commission proposed a rule which would have required a complainant, at the time of filing a complaint, to attach copies of all documentation in the complainant's possession upon which he or she intends to rely to establish the alleged violations, and, in any case where the complainant intends to rely on the testimony of third parties, to attach copies of such affidavits. See Proposed Rule 12.13. If such affidavits were not available, the complainant was required by this rule to submit an explanation of why they were not obtainable and a statement of what the complainant believed would be stated in the affidavits. Another rule prescribing the content requirements of an answer would have imposed similar duties upon respondents. See proposed rule § 12.18.

The Commission received numerous comments concerning the proposed requirements of attaching affidavits and documentary evidence to the complaint

[11] The Commission also received recommendations from a number of commentors suggesting that the Commission change its proposed rules to require the complaint to be served on the respondents named therein at the time it is filed. This matter is addressed, *infra*, where the content requirements for, and the preliminary consideration of, pleadings are discussed in detail.

and answer at the time of filing, all of which urged the Commission not to adopt such requirements. One commentor believed that a requirement that parties obtain verified statements from third party witnesses would be unduly burdensome, time-consuming, and would likely precipitate successive requests for extension of time. Another commentor indicated that requiring a complainant to attach affidavits and documentary proof when filing the complaint would be unworkable because complainants in most cases will not know what key items of proof they intend to rely on prior to discovery. Other comments also indicated that the parties frequently change the character of their cases and the number and identities of witnesses throughout the course of a proceeding.

The Commission has considered these comments, and, in light of its determination, discussed *infra*, to permit the parties to conduct their own discovery, it believes that it is not necessary to require parties to attach affidavits and documentary proof to their pleadings at the time of filing. Under the discovery rules of Subpart B, parties are required to complete discovery within sixty days after a proceeding is commenced pursuant to § 12.26. The elimination of the requirement of attaching affidavits and other proof to the pleadings and the adoption of a sixty day discovery procedure would effectively postpone the parties' obligation to perform discovery-related duties from the pleadings stage of a case until the Director of the Office of Proceedings determines that a reparation proceeding should be instituted. The Commission does not believe that such a postponement will result in any significant delay.

The proposed rules prescribed other content requirements for a complaint, answer and reply. Under these proposed requirements, complainants were required to include, *inter alia*, the name and address of each respondent; if known, the specific provisions of the Act violated; a complete description of the facts relevant to complainant's case; the amount of damages claimed and the method by which such were computed; a statement indicating whether there are pending any factually-related arbitration or civil court proceedings, and whether any respondent is subject to receivership or bankruptcy proceedings; and an election of either the voluntary decisional procedure or, depending upon whether the amount of damages claimed exceeds $10,000, the summary or formal decisional procedures. These requirements are similar to those in effect under the Commission's former reparation rules.

The Commission received several comments recommending that these content requirements be strictly enforced against complainants. A number of commentors suggested that the proposed rules be amended to require complainants to cite specifically the provisions of the Act or Commission's regulations alleged to have been violated by a respondent. Another commentor indicated that allegations of fraud should be required to be pleaded with particularity. According to these commentors, any failure to comply with these strict pleading requirements should result in a dismissal of the complaint with prejudice.

The Commission appreciates that a complainant's failure adequately to describe the factual bases for his claims against a respondent can make it virtually impossible for the respondent to submit a responsive answer to the complaint. The Commission believes that it is critical to the efficient operation of its reparation program that a complaint include an intelligible description of the conduct which the complainant alleges to be in violation of the Act. Therefore, the Commission, in § 12.13(b)(1)(iv)(A), has adopted the provisions of proposed rule § 12.13 which require a complainant to include in his complaint "[a] description of all relevant facts concerning each and every act or omission which it is claimed constitutes a violation of the Act," as well as "all facts which show or tend to show the manner in which it is claimed that the complainant was injured by the alleged violations." In adopting this rule, the Commission expects that a complaint will not be forwarded to a respondent unless it affords a respondent intelligible notice of the nature of the claims brought against him.

Concerning comments seeking a requirement that a complainant cite the specific provision of the Act violated, the Commission has determined not to adopt such a rule. From its experience in administering the reparation program, the Commission has observed that some attorneys for complainants, and, more frequently, complainants acting *pro se*, tend to be less experienced in legal matters arising under the Commodity Exchange Act than their counterparts associated with the commodities industry. Moreover, the development of a body of decisional precedent, at least at the Commission and judicial levels, concerning issues arising under the Commodity Exchange Act is still in an early stage. For these reasons, complainants in some cases should not be expected to know the specific provision of the Act violated in alleging they were injured as a result of specific conduct by a respondent.

The Commission therefore has adopted a rule requiring a complainant to cite a specific provision of the Act alleged to have been violated only if this provision of law is known. The Commission does not believe that a recitation of a particular law violated is critical to a respondent's defense against a claim, as the description in the complaint of the course of conduct complained of should provide respondents with enough information to determine whether that conduct, even if admitted, is unlawful.[12]

Section 12.13 of the rules also requires a complainant, at the time of filing the complaint, to tender a filing fee the amount of which varies depending upon which decisional procedure is elected in the complaint. Section 12.13(b)(4) restates the requirement of Section 14(c) of the Commodity Exchange Act that a complainant who is a non-resident of the United States shall, before any formal action is taken on his complaint, first furnish a bond in double the amount of damages claimed, provided that the requirement of filing a bond may be waived if the complainant is a resident of a country that permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

While the Commission does not consider the timely payment of a filing fee in connection with the filing of a complaint to be "jurisdictional," *e.g.*, for statute of limitations purposes,[13] the double bond requirement of § 12.13(b)(4) is imposed by Section 14(c) of the Act, and therefore, not subject to waiver by

[12] The Commission also received a comment suggesting that the Commission provide potential complainants with a form complaint that would instruct them to include all of the specific information called for by § 12.13(b) of the rules. The Commission believes that the use of a form complaint and answer by a complainant and respondent would simplify the task of complying with the content requirements of § 12.13 and 12.18 of the rules, respectively, and the Commission intends to prepare a form complaint and answer for these purposes. These forms will also be accompanied by a package of explanatory materials discussing the alternative decisional procedures that may be elected in reparations, as well as the availability of alternative forums for resolution of the parties' dispute such as NFA arbitration and civil court litigation.

[13] The Commission does not expect to waive its rules requiring the timely payment of filing fees (e.g., to accompany the initial pleadings or a notice of appeal) in the absence of extraordinary circumstances.

the Commission unless the "reciprocity" exception of Section 14(c) applies. Accordingly, to the extent that Section 14(c) requires the filing of a bond in a given reparation case, the Commission regards a non-resident complainant's compliance with such a requirement to be "jurisdictional." [14]

Proposed rule § 12.13(b)(3) prescribed the time and place for filing a complaint and provided that "the complaint need not be served on any person or party named therein." The Commission received several comments suggesting that this proposed rule be changed to require complainants, at the time of filing the complaint with the Commission, to serve a copy thereof upon the respondents named therein without awaiting a determination by the Director of the Office of Proceedings to forward the complaint for an answer. According to these commentors, the adoption of such a requirement would effect earlier notification to respondents about a potential reparation proceeding, allowing them to assure that relevant evidence is preserved, and may also encourage early settlement discussions.

The Commission has determined not to require the complainant to serve a copy of the complaint on a respondent at the time of its filing because the Commission believes that such a practice would complicate, rather than simplify, the reparation procedure by inviting respondents to become involved, *i.e.*, through the filing of motions to dismiss, to strike, for a more definite statement, and other preliminary motions, in a matter in which the Commission has not yet found it necessary for the respondent to participate. Under the Commission's final rules, when a complaint is filed, it is first reviewed by the Office of Proceedings for patent and superficial defects, *e.g.*, the statute of limitations has clearly expired on a claim, the complaint names unregistered respondents who are not subject to reparations, or the subject matter of the complaint is otherwise clearly beyond the Commission's reparations jurisdiction.

If the Office of Proceedings determines that the matters alleged in the complaint are not suitable for a reparation proceeding, consideration of the complaint will be terminated without any need for action on the part of a respondent named therein. Thus, service of a complaint upon a respondent at the time of its filing would be premature and unnecessary. Requiring a complaint to be served at the time of its filing may also be confusing to complainant because it may cause them to believe wrongly that upon effecting service they have become parties to a reparation proceeding entitling them to engage in discovery and motions practice when such is not the case. In light of its new procedures, the Commission does not believe that the relatively short period of time that it is expected to take for the Office of Proceedings to complete its initial review of the complaint (*e.g.* two to four weeks after the complaint is filed) will be a significant delay that will prejudice a respondent's ability to preserve evidence.[15] Accordingly, the Commission has determined to adopt its proposed rule which does not require service of the complaint at the time of its filing.[16]

As indicated earlier, once a complaint is filed, the Director of the Office of Proceedings conducts a brief review of its contents to determine whether it is clearly not suitable for a reparation proceeding. Unless the Director finds the complaint is clearly unsuitable for reparations, he is required to forward the complaint to one or more of the named respondents for satisfaction of the complaint. Pursuant to § 12.17, unless the respondent satisfies the complaint within forty-five days thereafter by paying the complainant the amount of damages claimed and submitting a notice of satisfaction duly executed by both parties, he is required to file an answer within the same period of time.

If a respondent elects to file an answer, the proposed rules, in addition to prescribing content requirements, permitted a respondent to include in the answer a motion to dismiss.[17] Proposed rule § 12.18(b) also provided that the inclusion in an answer of a motion to dismiss did not require a formal response by the Office of Proceedings, meaning that if the Director determined that, notwithstanding the motion to dismiss, the facts alleged in the complaint and answer warranted commencing a reparation proceeding, the Director could take such action pursuant to what is now § 12.26 without formally denying the motion.

Concerning this proposed preliminary motion to dismiss procedure, commentors favored an amendment to this procedure which would allow respondents to file a motion to dismiss in lieu of an answer, and would require the Director of the Office of Proceedings to rule upon such a motion before an answer would be required to be filed. The Commission believes that the adoption of this type of procedure would unduly delay the reparations process, as it would postpone a respondent's duty to file an answer (for which a respondent is already afforded a 45 day period under the rules) and may require the Director of the Office of Proceedings to resolve potentially subtle and complex questions relating to whether the complainant has adequately stated a claim arising under the Commodity Exchange Act.

It was not the Commission's intention in proposing new rules to involve the Director of the Office of Proceedings in a difficult and probing review of issues relating to sufficiency of allegations in a complaint. Rather, the Commission contemplated that the Director would conduct only a superficial review of the complaint before determining whether to forward the complaint pursuant to § 12.15. Because it would make reparations less expeditious, the Commission does not believe that a separate motion to dismiss procedure should precede respondent's duty to file an answer, or that the inclusion in an answer of a motion to dismiss should create an additional time-consuming process for the Director requiring him to issue a formal ruling on the motion.

In adopting a procedure similar to the motion to dismiss procedure contemplated by proposed rule § 12.18, the Commission nevertheless has recognized that a motion by a respondent included in his answer which petitions the Director to consider patent defects in the complaint should not be denominated a "motion to dismiss," because that terminology may wrongly imply that a proceeding has been instituted and that a grant of such a motion would result in dismissal of the proceeding. In actuality, however, at the point in the process when the motion is appropriate, *i.e.*, when the respondent is required to file an answer, no proceeding has yet commenced, and the Director has only made an initial

[14] *Cf. Kessenich* v. *Commodity Futures Trading Commission*, 684 F.2d 88, 93 (D.C. Cir. 1982).

[15] The Commission appreciates that the problem of delay and the difficulty with preserving evidence in some cases may have been serious under the Commission's former reparation procedures. However, the Commission is now no longer statutorily required to investigate a complaint, and the potential for delay arising out of such investigations has been eliminated under the new rules.

[16] The Commission also does not find it necessary, as one commentor suggested, to adopt a rule requiring the respondent to be notified when the Director determines pursuant to § 12.15 not to forward the complaint to a respondent for a response.

[17] This proposed procedure would have codified a procedure in effect under the Commission's former reparation procedures, and acknowledged in an adjudicatory proceeding, *Roberson* v. *Rosenthal & Company*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,748 (January 24, 1979).

cursory review of the complaint and a determination that it should be forwarded for a response by the respondent. To more accurately characterize the nature of this motion, the Commission in § 12.18 of its final rules has determined to redesignate the motion to dismiss prescribed in proposed rule § 12.18 a "motion for reconsideration of the determination to forward the complaint."

As indicated earlier, whenever a motion for reconsideration of the determination to forward the complaint is included in an answer, the Director will be expected to consider the arguments made in the motion only superficially. If the contents of the motion call to his attention any clear and unmistakable justification for declining to institute a proceeding, the Director may grant the motion, without a formal ruling, by terminating consideration of the pleadings pursuant to § 12.27. If the matters raised in the motion and the other contents of the answer do not point out to the Director any readily identifiable bases for a determination not to institute a proceeding, the Director may deny the motion, without a formal ruling, by determining to forward the pleadings for a proceeding pursuant to § 12.26. Such a denial, of course, would not be prejudicial to the respondent's right to reassert the matters cited in his motion for reconsideration in a later motion for dismissal filed after the proceeding commenced.

Section 12.18(a)(6) also authorizes a respondent to include in his answer a counterclaim which, to be capable of being heard in reparations, must either allege facts which would independently be the proper subject of a reparation complaint under § 12.13, or arise out of the same transactions or occurrences set forth in the complaint.[18] Section 12.18 also requires a respondent in his answer to elect between two of the three decisional procedures, and, if appropriate, to pay a filing fee, if the procedure elected has a more costly filing fee than the procedure elected by the complainant.

Under the proposed rules, if the amount of damages claimed does not exceed $10,000, the complainant was authorized to elect in his complaint either the voluntary decisional procedure or the summary decisional procedure, but not the formal procedure. Conversely, if the damages claimed exceeded $10,000, the complainant could elect the voluntary decisional procedure or the formal decisional procedure, but not the summary procedure. Depending upon whether the complainant elected the voluntary, summary or formal decisional procedure, under the proposed rules he would have been required to pay a filing fee in the amount of $25, $100, or $250, respectively, at the time of filing the complaint.

If the complainant elected the voluntary procedure and paid the $25 filing fee, the respondent, depending upon whether the amount of damages claimed or counterclaimed exceeded $10,000, could elect either the summary or formal decisional procedures in his answer, and the proceeding, if commenced pursuant to § 12.26, would be conducted pursuant to the respondent's election. If the respondent made such an election of a different, more costly decisional procedure, the respondent in the proposed rules would have been required to pay a filing fee of $75 or $225, respectively, depending upon whether the amount in controversy permitted him to elect the summary or formal decisional procedure. A respondent would not have been required to pay any filing fee if he, like the complainant, also elected the voluntary procedure.[19]

The Commission received numerous comments about the proposed fees required for each of the decisional procedures, and the proposed rule which required respondents to pay a portion of the filing fee in the manner outlined above. Concerning the proposed fee structure—requiring a $250 fee for the formal decisional procedure, a $100 fee for the summary decisional procedure, and a $25 fee for the voluntary decisional procedure—some commentors believed that it is designed to make the reparations process too expensive for customers so that they will be forced to use broker-sponsored arbitration. Another commentor complained that the $250 filing fee proposed for the formal decisional procedure had no rational basis, and therefore is arbitrary. Other commentors were opposed to a respondent being required to bear any portion of the filing fee unless the respondent filed a counterclaim.

The Commission does not believe that the filing fees proposed for any of the three decisional procedures were too high or that they lacked a rational basis. The actual cost to the Commission, in terms of staff personnel hours alone, of administering a reparation proceeding pursuant to the voluntary, summary, or formal decisional procedures, will be considerably higher than the $250 fee proposed for the Commission's most expensive procedure. Even so, administering the voluntary decisional procedure is expected to cost less than the two other procedures because the decisionmaker will not hear oral testimony or prepare a decision that must be accompanied by written findings of fact. The summary decisional procedure is expected to cost the Commission more than the voluntary procedure because of a possibility that the decisionmaker may hear oral testimony in Washington, D.C., or by telephone, and because he is required to prepare an initial decision containing findings and conclusions. The formal decisional procedure is expected to be most costly to the Commission because it may necessitate travel by an Administrative Law Judge to distant locations in the United States, it may involve a full trial-type hearing (with reporting and transcription costs), and because it requires an Administrative Law Judge to prepare an initial decision accompanied by findings and conclusions. These differences provide a rational justification for establishing a fee structure which makes the voluntary procedure the least expensive to elect, and the formal procedure the most expensive.

The Commission does not believe that its proposed fee structure was designed to inhibit customers from utilizing the reparations procedure. The $250 filing fee proposed for the formal decisional procedure would have been comparable to the fee required in many arbitration forums where the amount in controversy exceeds $10,000. In addition, the Commission believes that reparations will remain a desirable alternative to federal court litigation, which has a

[18] Commentors recommended that even if the Commission finds a complaint to be defective, and therefore, not the proper subject of a proceeding, or subject to dismissal, after a proceeding has been instituted, the Commission should permit a proceeding to go forward as to counterclaims which satisfy the requirements of § 12.19 of the rules. As we recognized *supra*, Congress' overriding purpose in creating reparations was to provide a forum for aggrieved customers seeking redress for losses sustained as a result of violations of the Act committed by commodity professionals registered under the act. *See* H.R. Rep. No. 975, at 22, 93d Cong., 2d Sess. (1974). If a commodity customer's claims are not forwarded for a proceeding, or are dismissed without prejudice, because they are not cognizable in reparations, the Commission does not believe that Congress intended the Commission to devote its scarce resources to adjudicating only claims by registrants against customers. Accordingly, §§ 12.21, 12.27, 12.205, and 12.306 of the newly adopted rules only authorize either the termination of consideration of all of the pleadings or the dismissal of the entire proceeding, if none of the claims in the complaint are cognizable in reparations.

[19] Similarly, the respondent would not have been required to pay any fee if the complainant elected the summary or formal decisional procedure, and a proceeding was commenced pursuant to the complainant's elected procedure. See, however, note 20, *infra*.

lower filing fee, because in most cases overall legal expenses incurred in connection with a reparation proceeding can be expected to be less than for a case brought in federal district court.

Even though a party has elected the formal decisional procedure and paid the filing fee, he would nevertheless not be entitled to a proceeding if the Director determined not to forward the complaint pursuant to § 12.15, or not to take action pursuant to § 12.26. And none of the filing fees, as proposed, were refundable if the Director failed to take action pursuant to § 12.26. Because the administrative cost to the Commission of implementing a refund procedure for this possibility would be prohibitive in terms of meeting its reparations budget, the filing fees, once paid, are not refundable to parties. However, to alleviate some of the expense to parties who have to pay the filing fee but nonetheless do not become participants in a formal decisional proceeding, the Commission has determined to reduce its non-refundable filing fee for the formal decisional procedure from $250, as proposed, to $200.

In the event that a complainant elects the voluntary decisional procedure and pays the $25 filing fee therefor, the amount of filing fee that a respondent would have to pay for the summary decisional procedure is $75. The amount that the respondent would have to pay for the formal decisional procedure has been reduced from $225 to $175.[20] The Commission believes that there is a strong justification for imposing upon a respondent the burden of bearing a portion of the filing fee when he elects a decisional procedure that is more costly than a procedure elected by the complainant. A respondent will be called upon to pay part of the fee in cases in which the complainant has elected the voluntary decisional procedure, and in which the respondent does not wish to participate in the voluntary procedure. Since the respondent would then be the only party interested in the more costly procedure, he should be required to bear most of the expense for the procedure. If the complainant's claims ultimately prove to be groundless, the respondent may be able to recover his portion of the fee as costs. The Commission also believes that a requirement that a respondent bear part of the filing fee when he elects a decisional procedure more expensive than the voluntary procedure will provide an incentive to respondents to consider seriously the advisability of participating in a voluntary decisional proceeding whenever a complainant elects such a procedure.

As indicated earlier, once a respondent files an answer, with or without a motion for reconsideration contained therein, the Director of the Office of Proceedings will review all the matters stated therein, and, if appropriate, re-review the matters stated in the complaint. After making this review, the Director, if in his opinion the facts warrant taking such action, is required by § 12.26 to forward the pleadings and all other materials of record for an elected decisional proceeding. A reparation proceeding commences upon service of a notification to the parties that the Director has taken such action.

A number of commentors suggested that the Commission adopt express standards for determining whether the facts warrant the Director taking action pursuant to § 12.26, *i.e.*, forwarding the pleadings for a reparation proceeding. In the Commission's view, the Director is required to institute a proceeding on a complaint pursuant to § 12.26, unless from his review of the pleadings he finds that the matters stated in the complaint are not cognizable in reparations.

While standards for determining whether matters stated in the complaint are not cognizable in reparations cannot be articulated in their entirety, the following are typical examples of grounds for which the Director could decline to institute a reparation proceeding: (1) The statute of limitations applicable to the claims alleged in the complaint has expired; (2) the complaint names respondents who were not registered at the time of the alleged violation and who are not otherwise subject to reparations; (3) the complaint, because of a complainant's mistake in identifying a respondent, names the wrong respondent in his complaint; (4) there is a parallel proceeding pending, *e.g.*, an arbitration, civil court proceeding, or receivership or bankruptcy proceeding involving one or more of the claims and/or the respondents named in the complaint; and (5) the Director, after conducting a initial review of the complaint and answer, recognizes clearly that the matters stated in the complaint do not form the basis for a claim in reparations, *e.g.*, it is clear from the facts alleged in the complaint that the complainant has not suffered actual damages proximately caused by a respondent's alleged violation, or the complaint concerns only a transaction such as a cash market or a cash forward contract that is not subject to the provisions of the Act. The foregoing list of matters that are not cognizable in reparations are intended merely to be illustrative not exhaustive.

A determination by the Director of the Office of Proceedings to take action pursuant to § 12.26 resulting in the commencement of a reparation proceeding is not appealable to the Commission on an interlocutory basis. If a respondent in a summary or a formal decisional proceeding believes that the Director has erred in making such a determination, the respondent may file a motion for dismissal after the proceeding has commenced, and, as indicated earlier, if his answer included a motion for reconsideration of the Director's determination to forward the complaint, the respondent's motion for dismissal may be based on the same matters cited in the motion for reconsideration.[21]

D. Discovery

In its proposed rules, the Commission would have modified the method by which parties could obtain discovery. The proposed method would have permitted the parties to apply to the decisionmaker (or, if the formal decisional procedure had been elected, the Proceedings Officer) for an order compelling other parties and non-parties to produce documents and tangible items, affidavits, and verified written responses to interrogatories which the applying party could suggest to the decisionmaker. The decisionmaker would have the authority to accept or reject, in whole or in part, any such application for a discovery order. The proposed rules also permitted the decisionmaker, acting on his own motion, to issue orders for the production of documents, affidavits, and for responses to written interrogatories, and, thus, to conduct his own discovery.

The Commission received numerous comments about the proposed new method of discovery. Some commentors indicated that the proposed discovery procedure would be less efficient and expeditious than the discovery rules in

[20] Although § 12.25 is silent on this matter, the Commission interprets this rule as requiring a respondent who has filed a counterclaim in excess of $10,000 to pay the difference of $100 for a formal decisional proceeding, if the complainant elected the summary decisional procedure and paid the $100 fee therefor because his claims did not exceed $10,000.

In any case where a respondent is required to pay a portion of the filing fee, the respondent is required to submit the fee at the time the answer is filed. A failure by a respondent to timely submit the required fee will result in the commencement of a default proceeding against him pursuant to § 12.22.

[21] And, as also indicated earlier, a determination by the Director not to institute a proceeding pursuant to § 12.26, by virtue of § 12.27, would not be subject to appeal to the Commission.

effect under the former reparation procedure (which allowed discovery by the parties without leave of a decisionmaker), insofar as it would require each discovery request to be the subject of a motion and a ruling by the decisionmaker. According to these commentors, this process would entail a needless expenditure of Commission resources in terms of time and cost in that a decisionmaker would be required to consider the validity of each discovery request before issuing an order for discovery. Other commentors expressed concern that the proposed new discovery method would be much more time-consuming and burdensome for the parties because of the requirement that they prepare an application for a discovery request in addition to the discovery request itself. Another commentor complained that the proposed discovery rules would grant too much authority to the official administering discovery, and that if parties believed that discovery was unjustly limited, many interlocutory appeals could be expected. Many commentors indicated that the Commission's former discovery rules provided an efficient means for discovery and that they should be retained.

The Commission believes that there is considerable merit in these comments and has determined not to adopt its proposed discovery rules insofar as they would have precluded discovery by the parties except upon application to the decisionmaker. In lieu of the proposed discovery rules, the Commission has determined to adopt rules permitting parties to conduct their own discovery in substantially the same manner as they were authorized to under the Commission's former reparation rules,[22] with some important modifications.

Under the final rules, the Proceedings Clerk, at the time that he serves notification to the parties that a proceeding has been commenced pursuant to § 12.26, is required to issue an order accompanying the notification directing the parties to complete discovery within sixty days thereafter. As was the case under the Commission's former reparation rules, parties under §§ 12.31, 12.32, and 12.33, are entitled to obtain production of documents, depositions on written interrogatories from parties and non-parties, and admissions from parties, without leave of a decisionmaker or discovery official.

Some new restrictions in the final rules have been imposed on the parties' right to obtain these forms of discovery without an order from a presiding official. In the case of a request for the production of documents, parties are not entitled to obtain the personal tax returns and bank account records of any other party or person, absent the granting of a motion made therefor which shows the need for disclosure of information contained therein, and which further shows that the same information could not be obtained through other means. In the case of depositions on written interrogatories, parties are entitled to obtain responses to not more than thirty interrogatories. Leave to grant additional interrogatories will not be granted in the absence of extraordinary circumstances. Furthermore, "form interrogatories," *i.e.*, general purpose interrogatories not specifically tailored for discovery in the particular reparations proceeding, will be disfavored. Protective orders and awards of costs for the abuse of discovery can be expected to be granted readily when such interrogatories are used.

The final discovery rules also employ the protective order procedure that was in effect under the Commission's former reparation rules,[23] as well as a new procedure permitting motions to compel discovery. Whenever a discovery-related dispute culminates in a motion for a protective order or an order compelling discovery, § 12.30(c) of the new rules provides that costs (including attorney's fees) may be awarded as a sanction against the party whose conduct necessitated the motion, if the motion is granted, unless it is found that opposition to the motion was substantially justified, or against the party who filed the motion, if the motion is denied, unless it is found that the filing of the motion was substantially justified. Section 12.30(d) makes clear that the parties' right to serve a discovery notice or request expires on the fortieth day after service of the notification that the proceeding has commenced, unless an additional thirty day period is granted upon a showing of good cause.

The Commission, in § 12.34, has determined to adopt for utilization in the summary and formal decisional procedures its proposed rules permitting the decisionmaker to conduct discovery on his own motion.[24] The Commission believes that a decisionmaker's ability to make a fair decision will be enhanced, especially in close cases in which parties have failed to construct an adequate record through discovery, if he is granted the authority on his own motion to order parties and non-parties to submit documents, affidavits, and verified written responses to interrogatories formulated by the decisionmaker. This authority would not apply in voluntary decisional proceedings [25] where the Commission believes that it is incumbent upon the parties, through discovery or otherwise, to assure as complete a record as is possible.

E. The Voluntary Decisional Procedure

As indicated earlier, the Commission has determined to adopt the voluntary decisional procedure, which affords parties regardless of the amount of damages claimed or counterclaimed a low-cost, very expeditious procedure, analogous to commercial arbitration, which will result in a final, unappealable decision, with or without a reparation award. Concerning its proposal to adopt this procedure, the Commission received comments indicating that a voluntary decisional procedure, because of its similarity to commercial arbitration, is unnecessary in that it would duplicate the arbitration program established by the National Futures Association. Moreover, commentors predicted that few respondents would agree to participate in this procedure because respondents would rather have disputes decided in a broker-sponsored or other non-government arbitration forum.

The Commission does not believe that the voluntary decisional procedure will be wholly duplicative of the arbitration program offered by the National Futures Association. For example, NFA's arbitration program will not decide disputes between parties to leverage transactions, and does not mandate the arbitration of claims against floor brokers. Conversely, the Commission's voluntary procedure will not be available to a customer who, although possessing claims based on state law, has not alleged a violation of the Commodity Exchange Act, or the Commission's regulations, committed by his broker. Moreover, NFA arbitration is still in the early stages of its development, and, at this juncture, it would be premature to determine whether the existence of NFA arbitration renders unnecessary the voluntary decisional procedure. Congress created the reparations remedy and empowered the Commission to promulgate such rules as will make that remedy meaningful. For present

[22] See 17 CFR 12.62–12.65 (1983).

[23] 17 CFR 12.62(b)(2) (1983).

[24] See, e.g., Proposed rules §§ 12.208, 12.209.

[25] The Commission's reasoning for not authorizing a Judgment Officer, acting on his motion, to conduct discovery in a voluntary decisional procedure is discussed *infra*.

purposes, the Commission believes that the establishment of a voluntary decisional procedure is a useful step toward that goal. The Commission intends to work with NFA to include a description of NFA's arbitration program as part of a description of available arbitration alternatives included within a packet of explanatory materials to be made available to parties. Although it has determined to establish the voluntary decisional procedure, the Commission will continue to evaluate NFA's arbitration program and reconsider at a later time whether its voluntary procedure remains necessary.

The Commission also received comments concerning the proposed rules applicable to voluntary decisional proceedings. Specifically, commentors objected to allowing Judgment Officers to conduct pre-decision conferences to encourage settlement by the parties or to facilitate amendments of the pleadings, and to vesting authority in Judgment Officers to conduct oral examination of these parties, without permitting parties to conduct their own direct and cross examination. Other commentors expressed the view that the Commission should not be permitted to review a final decision on its own motion.

Because there is no right to appeal a decision rendered pursuant to the voluntary decisional procedure, the Commission believes that the parties' right to a fair procedure must be given the maximum degree of protection. While the Commission originally proposed to permit the decisionmaker, a Judgment Officer, to hold pre-decision conferences and to conduct discovery and oral examination of parties and their witnesses, upon considering the comments discussed above, the Commission recognizes that the exercise of these authorities by a Judgment Officer would inject an unwanted measure of unpredictability into a voluntary decisional proceeding, because parties after completing discovery would lose control over the direction of the development of proof in the proceeding. This unpredictability may be, to any party concerned about the amount of discretion vested in a Judgment Officer, a powerful disincentive to participate in a voluntary decisional proceeding. Accordingly, the Commission has determined not to adopt its proposed rules [26] which would have permitted a Judgment Officer to hold pre-decision conferences, to conduct discovery on his own motion, and to conduct oral examination of the parties and their witnesses. Therefore, pursuant to § 12.105, the Commission is requiring all proof in a voluntary decisional proceeding to be submitted only in documentary and tangible form.[27]

Because the voluntary procedure results in a final decision, unaccompanied by findings of fact, which is not appealable to the Commission or a court, one commentor requested the Commission to clarify what collateral effect, if any, a final decision in a voluntary decisional proceeding would have upon a respondent who has been found therein to have violated the Act or the Commission's regulations. Section 8a(2)(E) of the Act provides that the registration of any person may be denied, conditioned, suspended, or restricted, "upon notice but without a hearing," and may be revoked with such hearing "as may be appropriate," if it is found by the Commission that such person violated the Act or a regulation issued thereunder where such violation involves, *inter alia*, fraud, misappropriation of funds, securities or property, and similar offenses. Section 8a(4) of the Act, incorporating by reference Section 8a(3)(A), further authorizes the Commission to revoke the registration of any person if it is found, after affording such person an opportunity for a hearing, that such person, *inter alia*, has been found by the Commission to have violated any provisions of the Commodity Exchange Act or the Commission's regulations which constituted an offense not specifically set forth in Section 8a(2).

If a Judgment Officer finds in a final decision rendered in a voluntary decisional proceeding that a respondent has violated the Act, the proposed rules were not clear as to whether such a finding would constitute a finding of the Commission which could serve as the basis for revocation of the respondent's registration pursuant to Section 8a(2) or 8a(4) of the Act. Because of the nature of the voluntary decisional procedure, the Commission has determined that a final decision rendered in a voluntary decisional proceeding shall have not any effect for statutory disqualification purposes. Accordingly, the Commission does not regard a finding contained in a final decision to be a finding of the Commission for the purposes of Section 8a of the Commodity Exchange Act, and § 12.106(b) of the final rules contains a provision reflecting this view.[28] However, § 12.106(b) would not bar the Commission from instituting a proceeding pursuant to Section 6(b) of the Act based upon facts that were the subject of a voluntary decisional proceeding.

Section 12.403(b) of the new rules provides that "[i]f such action is necessary to prevent manifest injustice, the Commission may, upon its own motion, review a final decision filed pursuant to § 12.106 . . . within 30 days after service upon the parties of the final decision." The Commission interprets the term "manifest injustice" within the meaning of § 12.403(b) to extend, by analogy, only to those extraordinary conditions pertinent to reparations which would justify a federal court's decision to vacate an arbitration award pursuant to 9 U.S.C. 10,[29] or to modify an arbitration award pursuant ot 9 U.S.C. 11.[30] As indicated earlier, one commentor indicated that the Commission should not reserve to itself the authority to review on its own motion a final decision rendered in a voluntary decisional proceeding. The Commission disagrees that it should not have the power to review and take corrective action when manifest injustice would result from its failure to do so. Given the narrow interpretation of its standards for what constitutes "manifest injustice," discussed in notes

[26] Proposed rules §§ 12.105, 12.106, 12.107, 12.109(b), and 12.110.

[27] While the allocation of the burden of proof in a reparation proceeding is not controlled by Section 7(c) of the Administrative Procedure Act, 5 U.S.C. 556(d), the Commission interprets its Part 12 reparation rules as imposing upon the proponent of an order awarding monetary relief, i.e., a complainant seeking a damage award on its claims, or a respondent seeking a counterclaim award, the burden of proof.

[28] Although a final decision will not have any effect for the purposes of Section 8a of the Act, and is not considered a Commission order which is appealable pursuant to Section 14(e) of the Act, § 12.106(d) acknowledges that a final decision rendered in the course of a voluntary decisional proceeding is a final order of the Commission for all other purposes including the judicial enforcement pursuant to Section 14(d) of the Act of any award contained therein. The Commission believes that a final decision in a voluntary decisional proceeding should be accorded the same res judicata effect that any final reparation decision and order would be entitled to.

[29] Such grounds, by analogy to 9 U.S.C. 10, would include: evidence that a final decision was procured by corruption or extrinsic fraud; evident partiality or corruption on the part of the decisionmaker; unreasonably prejudicial misconduct on the part of the decisionmaker; and that the decisionmaker exceeded his authority under Subpart C of the rules in a manner that prejudiced a party.

[30] Such grounds, by analogy to 9 U.S.C. 11, would include facts which show that there had been an evident material miscalculation of the amount of damages in an award contained in a final decision, or that the final decision improperly contained findings of fact or was otherwise imperfect as a matter of form not affecting the merits.

29 and 30, *supra*, the Commission expects to exercise its authority under § 12.403(b) only in rare instances.

The Commission appreciates that the success of the voluntary decisional procedure as an efficient and expeditious dispute resolution forum depends upon the willingness of respondents as well as complainants to choose this procedure. Accordingly, the Commission has tailored the rules in Subpart C to provide what may be regarded as incentives to respondents to consider seriously the advisability of electing this procedure. Among these incentives are: (1) A respondent is relieved of any duty to pay a filing fee; (2) because no oral testimony may be received in the voluntary procedure, a respondent should not have to incur legal expenses attributable to preparing for and presenting such testimony; (3) a respondent will not be liable for prejudgment interest in connection with a reparation award rendered against him; (4) if the respondent has a successful counterclaim against the complainant, he will most likely obtain an earlier award under the voluntary procedure; (5) awards may not exceed the amount of damages claimed or counterclaimed in the pleadings; and (6) as discussed above, if a respondent is found to have violated the Act, such a finding will not constitute a basis for, *inter alia*, revocation or suspension of his registration.

The Commission believes that a voluntary decisional procedure would be beneficial to parties who have selected reparations from the many alternative forums for resolution of their dispute, and who are in need of a speedy resolution of that dispute. Moreover, to the extent that parties avail themselves of the voluntary procedure in lieu of the more time-consuming summary or formal decisional procedures, the Commission's backlog of cases would be reduced, resulting in a faster determination of claims heard under the other decisional procedures. In addition, pursuant to Section 12.1(c), the voluntary decisional procedure is available to parties to cases pending on the effective date of these rules in which an initial decision has not been rendered.[31]

[31] And, concerning cases processed entirely under the new rules, even if a summary decisional proceeding or a formal decisional proceeding has commenced, parties to such proceeding may elect to have the case heard pursuant to the voluntary decisional procedure at any time before an initial decision is rendered in the proceeding. See §§ 12.200 and 12.300 of the rules.

F. The Summary Decisional Procedure

In its proposed rules, the Commission proposed to establish a summary decisional procedure to replace the Commission's former summary proceedings rules. Under the former reparation rules, in cases in which the amount of damages claimed or counterclaimed did not exceed $5,000, all proof would be submitted in documentary form. After proof was submitted in such cases, a presiding officer employed by the Commission would render an initial decision which could be appealed to the Commission pursuant to an application for review procedure. In proposing to adopt a summary decisional procedure, the Commission proposed two significant modifications to the former summary proceedings rules: (1) Increasing to $10,000 the monetary ceiling on claims or counterclaims that could be heard pursuant to the summary procedure; and (2) authorizing the decisionmaker, in cases where issues of credibility are of critical importance, to conduct oral examination of the parties and their witnesses in Washington, D.C., or by telephone.

Because the summary decisional procedure, as finally adopted, does not afford parties full oral hearing privileges, or the opportunity to submit proposed findings of fact and conclusions of law memoranda,[32] As does the formal decisional procedure, a summary proceeding is expected to be considerably more expeditious than a formal decisional proceeding. In order to increase the number of cases that would qualify for this more expeditious procedure, the Commission proposed to raise from $5,000 to $10,000 the monetary limit on claims or counterclaims that could be heard pursuant to the summary decisional procedure.

Commentors on this proposal believed that the summary decisional procedure violated parties' due process rights by denying them the opportunity to present oral testimony and conduct oral examination of other parties and witnesses. According to these commentors, by raising the monetary ceiling for claims that could be heard according to the summary procedure, the Commission would simply be increasing the number of cases in which these rights were violated. Commentors also indicated that parties to this procedure should be granted oral hearings if they so request. Another commentor argued that the Commission's determination to fix $10,000 as the amount above which oral cross examination would be permitted had no rational basis.

[32] The Commission's basis for determining not to permit parties to file proposed findings of fact and conclusions of law is discussed *infra*.

The Commission's rationale creating a different procedure for cases involving claims for less than $10,000 than for cases where there are claims exceeding $10,000 is based on its belief that parties with smaller claims should be entitled to a less expensive, more expeditious procedure which offers a greater likelihood of an early damage award and recovery. In 1978, Congress by enacting what was then Section 14(b) of the Act, fixed $5,000 as the amount which, if claimed as damages, would determine whether parties' claims would be heard pursuant to a summary procedure which afforded no opportunity for an oral hearing. This reflected a congressional judgment that, in 1978, claims which did not exceed $5,000 were considered to be small claims entitled to a more expeditious, summary procedure.

The Commission cannot ignore the diminutive effect of continuous high rates of inflation in the years 1979 through 1982 on the value of the U.S. dollar as it existed in 1978. Considering this erosion of the value of the dollar over the past six years, the Commission believes that it is reasonable to establish $10,000 as an amount above which a damage claim will not be considered small. Moreover, because the $10,000 figure will likely serve as the designated amount for determining whether the summary or the formal procedure is available for several years in the future, it is likely to become an even less significant dollar amount as each year passes.

As indicated earlier, under the proposed rules a Judgment Officer was empowered to conduct oral examination of the parties and their witnesses in Washington, D.C., or by telephone, if he found that credibility issues of crucial importance existed in the proceeding. No oral examination by the parties, however, would have been permitted under such rules. In response to this proposal, two commentors indicated that a Judgment Officer should not be permitted to conduct oral examination of parties as this function should be reserved for Administrative Law Judges only. Some commentors also indicated that a Judgment Officer should not be vested with discretion to decide whether credibility issues are important enough to warrant oral examination of the parties.

In the final rules, the Commission has adopted a different procedure concerning oral examination from the

one it proposed. Under the newly adopted rules, a Judgment Officer, in addition to his authority to conduct oral examination of the parties, is authorized to permit parties to conduct oral direct and cross examination of other parties and witnesses in Washington, D.C. or by telephone.[33] The standard applicable to whether a Judgment Officer may conduct oral examination and permit oral testimony is also different. Section 12.208 authorizes a Judgment Officer, in his discretion, to conduct such examination and to permit such testimony "upon motion by a party, and where it is shown to be necessary or appropriate to resolve factual issues which are central to the proceeding." [34]

Because of the potential for delay associated with travel by a decisionmaker, the Commision has determined in §12.209 of the rules to permit oral examination and testimony to be heard in the presence of the decisionmaker in only one location, Washington, D.C. Under §12.209, if at least one complainant and one respondent executive a signed agreement to attend an oral hearing in Washington, D.C., the Judgment Officer, assuming that he has exercised his discretion to permit oral examination and testimony, may conduct such a hearing in that location. Any other parties who do not agree in writing to appear at such a hearing in Washington, D.C., shall be deemed to have elected to present oral testimony by telephone. If at least one party from each opposing side does not agree in writing to appear in Washington, D.C., all oral testimony will be heard only by telephone. In any such hearing, whether in Washington, D.C., or by telephone, or by both means, the Judgment Officer is vested with broad discretion to control the length and sequence of the parties' testimony, which includes the authority to terminate, at any stage of the hearing, examination by a party's counsel, and to conduct such examination himself. Oral examination in a summary decisional proceeding is required to be recorded electronically.

Concerning the Commission's proposal to allow oral examination by telephone, one commentor indicated that permitting oral examination by telephone would be an improvement over the Commission's former summary proceedings rules, which permitted no oral testimony by any means. Another commentor also regarded telephonic hearings as an improvement but expressed concern that the telephone witnesses could be coached without any awareness on the part of the Judgment Officer. The Commissioner is confident that a Judgment Officer will be able to assess the demeanor of witnesses from listening to their voices. Because the Judgment Officer can be expected to hold doubts about the credibility of any telephone witness whose testimony does not sound genuine, because he has the authority to conduct his own examination of such witnesses to confirm or dispel those doubts, and because telephone assertions can be measured against the documentary evidence of record, the Commission does not believe that the potential for the coaching of witnesses will have any effect on the Judgment Officer's ability to discern the truth.

Concerning the comment that only Administrative Law Judges, and not Judgment Officers, should be able to conduct oral examination of parties and witnesses, the Commission believes that its Judgment Officers will possess the ability to comprehend the often complex factual contexts of commodity-related disputes, to recognize critical issues of fact and law in the proceeding, to evaluate oral testimony and to conduct oral examination, and to render a well-considered initial decision in the proceeding. Accordingly, the Commission believes that there is no basis for precluding Judgment Officers from exercising any functions performed by Administrative Law Judges.

Section 12.205(c) now authorizes a Judgment Officer in a summary decisional proceeding to consider, and, if appropriate, grant motions to dismiss the entire proceeding, or any claim or party therefrom.[35] Section 12.207 permits motions for summary disposition in proceedings where there is no genuine issue of material fact and the moving party believes that he is entitled to a decision as a matter of law. Section 12.205(a) provides that "motions for relief not otherwise specifically provided for in this Subpart D of these rules, other than discovery-related motions and motions for extension of time and similar procedural orders shall not be allowed. . . ." [36]

Commentors indicated that all types of motions should be allowed, not just those specifically authorized by the rules applicable to summary decisional proceedings. The Commission proposed to limit the types of motions that could be filed in a summary proceeding because it believes that affording parties unlimited opportunities to engage in motions practice will permit delays in the proceeding and because, in view of the range of motions already permitted by these rules, it believes that any other types of motions would be unnecessary. In the interest of eliminating an unwanted potential for abuse and delay, the Commision has determined to adopt its proposal to limit the types of motions that could be filed in a summary decisional proceeding.

Although the proposed rules would have permitted parties to a summary decisional proceeding to file proposed findings of fact and conclusions of law memoranda, if so ordered by a Judgment Officer, the Commission believes that a review of the pleadings, discovery materials, the documentary proof, and, if applicable, oral submissions of proof by a Judgment Officer will be sufficient to enable him to identify the crifical factual and legal issues in the proceeding. The Commission has reconsidered its proposal to allow parties to file proposed findings and conclusions memoranda, and does not believe that the value that such memoranda contribute to the factfinding and decisionmaking processes outweighs the amount of time that a Judgment Officer must afford the parties to prepare such memoranda. Accordingly, the Commission in Section 12.210 has determined not to allow the filing of proposed findings of fact and conclusions of law.

Section 12.210 provides that after the parties have concluded their submission of proof, the Judgment Officer will render an initial decision which differs from a final decision rendered in a voluntary decisional proceeding insofar as it must be accompanied by findings of fact, may include an award of costs (including, if appropriate, reasonable attorney's fees), and, if warranted, an

[33] The Commission does not believe it necessary to address the argument made by several commentors that a party's due process rights are violated, regardless of the amount of damages claimed, whenever the party is denied oral hearing privileges, because the Commission has adopted § 12.209 of the rules which now afford parties a possibility of presenting oral testimony and conducting oral cross examination.

[34] Thus, a Judgment Officer is not required under the final rules to make a determination concerning whether credibility issues require for their resolution oral testimony to be heard, as he would have been required to do under proposed rule § 12.211(b).

[35] This represents a departure from the former reparation procedure which precluded decisionmakers from dismissing complaints for such defects as lack of subject matter jurisdiction and failure to state a claim which is justiciable in reparations. *See Antoniolli v. Clayton Brokerage Co., Inc. of St. Louis* [1977–1980 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 20,546 (January 18, 1978).

[36] Included in the class of prohibited motions are applications for interlocutory review, except those relating to debarment of counsel, or a decisionmaker's refusal to disqualify himself on grounds of bias, conflict of interest or similar bases.

award of prejudgment interest, and it may be appealed to the Commission. One commentor requested that the Commission set forth its standards for determining when it will award prejudgment interest in a reparation proceeding. In determining whether an award of prejudgment interest is appropriate in any given reparation case, the Commission intends to rely on the Seventh Circuit's decision in *Myron v. Chicoine*, 678 F.2d 727 (7th Cir. 1982),[37] and it own decison in *Ruddy v. First Commodity Corporation of Boston* [1980–1982 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶21,435 (March 31, 1981).[38]

Section 12.210(c) of the rules authorizing, if appropriate, an award of reasonable attorney's fees as costs in a summary decisional proceeding does not represent any departure from the Commission's policy concerning attorney's fees that was in effect under the former reparation rules. In *Sherwood v. Madda Trading Company*, [1977–1980 Tranfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,728, the Commission announced that in determining whether an award of attorney's fees as costs is appropriate, it would follow the "American rule" which holds that an award of attorney's fees as costs to the prevailing party is not appropriate unless, *inter alia*, the losing party acts "in bad faith, vexatiously, wantonly, for oppressive reasons." *Sherwood, supra*, at n. 26. The Commission expects to apply the "American rule," as well as the reasoning set forth in *Sherwood*, in detemining whether an award of attorney's fees is appropriate in a summary decisional proceeding.

G. The Formal Decisional Procedure

In its proposed rules, the Commission proposed to create the new position of "Proceedings Officer," who would be an employee of the Commission granted powers and duties analogous to these performed by United States Magistrates in preparing the record for a proceeding. See Proposed Rules 12.301–12.309. Under the rules as proposed, where the parties had elected the formal decisional procedure, and the Director of the Office of Proceedings determined to forward the pleadings for the possibility of the commencement of a proceeding the pleadings and other materials of record would first be reviewed by the Proceedings Officer. At that stage, the Proceedings Officer was authorized to conduct his own discovery, to hold pre-decision conferences, to consider and rule upon motions for dismissal, and to discuss amendments or supplements to the pleadings. After these matters were concluded, the Proceedings Officer was required, if in his opinion the facts warranted taking such action, to forward the materials of record to the Proceedings Clerk for immediate assignment to an Administrative Law Judge. A formal decisional proceeding would have commenced only after the Proceedings Officer took such action.

In addition to the powers enumerated above, the Proceedings Officer under the proposal rules would have had the authority to issue orders of default, and to make recommendations to the Administrative Law Judge concerning the need for an oral hearing to resolve issues of credibility which were crucial to the outcome of the proceeding. If an oral hearing were determined to be unnecessary, the Proceedings Officer could make recommended findings of fact and conclusions of law. The Administrative Law Judge assigned to the case would be free to accept or reject, in whole or in part, all recommendations made by a Proceedings Officer.

The Commission received numerous comments concerning the utilization of a Proceedings Office for the purposes detailed above. Many commenters believed that the creation of a Proceedings Officer for those purposes would add an unnecessary extra layer of review of the case and produce an entirely new potential for delay of a proceeding. Other commentators believed that a Proceedings Officer should not be permitted to conduct discovery, either on his own motion or upon application by a party, to hold pre-decision conferences, or to make recommendations to Administrative Law Judges concerning the need for an oral hearing and concerning findings of fact and conclusions of law.

We have considered these comments, and we do not find it necessary to grant a Proceedings Officer the authority to rule upon motions for dismissal. Also, given our amendments to the proposed discovery rules (discussed *supra)* which allow paties to conduct their own discovery in a formal decisional proceeding, we do not find it necessary to vest a Proceedings Officer with authority to conduct discovery on his own motion. Finally, given our determination (discussed *infra)* not to condition the parties' opportunity for an oral hearing upon the existence of factual issues which are crucial to the outcome of the proceeding and which require for their resolution credibility determinations to be made, it is unnecessary to vest a Proceedings Officer with authority to make recommendations concerning the need for an oral hearing or concerning findings of fact and conclusions of law.[39]

The Commission does believe, however, that a Proceedings Officer should be able to perform discovery-related functions, *i.e.*, serving as the initial arbiter in discovery disputes, which will expedite a formal decisional proceeding without creating any protential for delay. It has been the Commission's experience under its former reparation procedure that, expecially during periods when there was a significant backlog of cases, a substantial period of time could pass between the commencement of a proceeding and the assignment of a case to an Administrative Law Judge. It was not uncommon for parties in such cases to delay their efforts to obtain discovery until a judge was assigned to the matter. Thus, following a delay that would occur in assigning a particular case to an Administrative Law Judge, there would be yet another period of delay to allow parties sufficient time to complete discovery. Moreover, there were no time limits imposed on the parties' ability to obtain discovery under the former reparation rules.

While the final rules impose a duty on the Proceedings Clerk to assign the case to an Administrative Law Judge "as soon as practicable" after a formal decisional proceeding has been commenced pursuant to § 12.26(c), this rule recognizes that, in some instances, the Proceedings Clerk may be unable immediately to assign the case to a particular Administrative Law Judge.[40]

[37] In *Chicoine*, the Seventh Circuit stated that "[g]iven the compensatory basis of awarding prejudgment interest and the remedial purposes of CFTC reparation proceedings, we have no doubt that the Commission may award such relief in appropriate cases. . . . [T]he decision to award prejudgment interest rests in the sound discretion of the adjudicatory tribunal and involves a balancing of the equities between the parties under the circumstances of the particular case." 678 F.2d, at 734 (citations omitted).

[38] In *Ruddy*, the Commission announced that "[w]here . . . [prejudgment interest] awards are clearly compensatory and, as here, involve the breach of a fiduciary duty, prejudgment interest, while a matter of discretion, should hereafter be the rule, rather than the exception," *id.*, at 26,086 n. 18, *citing Rolf v. Blyth, Eastman Dillon & Co., Inc.*, 637 F.2d 77, 86–87 (2d Cir. 1980).

[39] The Commission also agrees that unwanted delays could arise by establishing a review procedure by a Proceedings Officer requiring such an official to make a determination whether to institute a "proceeding." The Commission therefore has declined to adopt its proposed rule § 12.309 which would have required a Proceedings Officer to review and forward pleadings before a formal decisional proceeding could be commenced. See Proposed rule § 12.309.

[40] Even if a case were immediately assigned to an Administrative Law Judge, he judge may not be

Continued

In such cases there would be no assigned decisionmaker to preside over discovery-related disputes between parties who, pursuant to § 12.30(c) of the new rules, must complete discovery within sixty days after the proceeding has commenced.

To enable discovery to proceed efficiently and expeditiously during the sixty-day period allowed by § 12.30(c), the Commission, in adopting § 12.301, has determined to authorize a Proceedings Officer during the sixty-day period allowed for discovery by § 12.30(d) to rule upon motions to enlarge the time permitted for discovery for one additional period not to exceed thirty days, as well as motions for leave to serve written interrogatories of a number exceeding thirty. Concerning any discovery notice served within the sixty-day period,[41] the Proceedings Officer is also authorized to rule upon motions for protective orders and motions for an order compelling discovery. The Proceedings Officer is also authorized during the sixty-day discovery period to hold pre-decision conferences in Washington, D.C. or by telephone, for the purposes of, *inter alia*, resolving discovery disputes, narrowing issues, obtaining stipulations and admissions of fact and of authenticity of documents, encouraging settlement of the entire case, and encouraging the early settlement of discovery-related disputes.

The Commission believes that utilizing a Proceedings Officer in the above manner will result in a substantial amount of case preparation being accomplished within the first two to three months following the commencement of a formal decisional proceeding, which would vastly improve and expedite its former reparation procedure. And because most of the Proceedings Officer's authority must be exercised, if at all, within the sixty days following the commencement of a proceeding, the Commission does not believe that the use of a Proceedings Officer for these purposes creates any new potential for delay.

Concerning the comment that the Proceedings Officer should not have any discovery-related authority, the Commission has determined to adopt a procedure for parties who are aggrieved by a discovery-related order issued by a Proceedings Officer. Pursuant to § 12.302, any such party may appeal a discovery-related ruling issued by a Proceedings Officer by filing within five days after service upon him of such order a motion to vacate or modify such ruling, or any part thereof. Upon the timely filing of such a motion, the Proceedings Clerk is required to forward the motion immediately to the Administrative Law Judge assigned to the case[42] who must rule on the motion within ten days thereafter, absent extraordinary circumstances. The Commission expects that the discovery ruling issued by the Proceedings Officer will be affirmed in the vast majority of cases. While this appeal procedure could result in delay if abused by parties who fail to honor any order issued by a Proceedings Officer, the Commission believes that the possibility of sanctions (*e.g.* being assessed costs, attorney's fees) for unjustified conduct during discovery, *see* § 12.30(c), will deter most parties from abusing this appeal procedure. In the event that any party fails to comply with a discovery-related order issued by a Proceedings Officer, the Proceedings Officer may make recommendations to the Administrative Law Judge as to what action should be taken (*e.g.*, default, dismissal) as a result of such party's refusal to comply.

The proposed rules applicable to the formal decisional procedure also conditioned the parties' opportunity for an oral hearing before an Administrative Law Judge on the existence of factual issues which are crucial to the outcome of the proceeding and which require for their resolution credibility determinations to be made. And if the Administrative Law Judge determined to grant an oral hearing to resolve such issues, the parties would be permitted to conduct only oral cross, re-direct, and re-cross examination of other parties and witnesses at such hearing. The proposed rules required direct testimony to be submitted in documentary form only.

Commentors did not favor the proposal that would allow parties an opportunity for an oral hearing only if the Administrative Law Judge determined that major issues of credibility made it necessary to conduct an oral hearing. Commentors indicated that authorizing an Administrative Law Judge to determine whether an oral hearing was necessary to resolve crucial issues of credibility would be entirely duplicative of the Commission's summary disposition procedure. And, if the summary disposition procedure were found to be inappropriate, these commentors indicated that parties' right to due process would be violated to the extent that an oral hearing was denied. Other commentors believed that the proposed standard applicable to whether an oral hearing may be granted was too nebulous and imprecise.

In cases where an Administrative Law Judge determined to grant an oral hearing, commentors indicated the Commission should not adopt a proposal which would not allow parties to present direct testimony orally. These commentors indicated that credibility determinations are based upon a party's or a witness' direct testimony just as frequently as they are based on cross examination. They also indicated that cross examination will be less effective when its scope is limited by documentary evidence. Another commentor indicated that requiring parties to present direct proof in documentary form would be unduly burdensome and costly because parties would be required to prepare additional paperwork. Finally, one commentor believed that the proposal to prohibit and direct examination at oral hearings would favor respondents which are brokerage firms because they generally have the resources to retain representation that is highly skilled at making written presentations.

The Commission agrees that parties to a formal decisional proceeding should be granted an opportunity for an oral hearing, in the discretion of the Administrative Law Judge, regardless of whether it is found that factual issues crucial to the outcome of the proceeding require for their resolution credibility determinations. Accordingly, the Commission has adopted § 12.312 making the opportunity for an oral hearing generally available to parties. Oral hearings should thus become the rule rather than the exception in formal decisional proceedings.[43]

available to preside over discovery disputes in a timely manner, because, for instance, he may be traveling to or from an oral hearing, or otherwise involved in disposing of other cases on his docket.

[41] Section 12.30(d) requires discovery by the parties to be *completed* within sixty days. Since parties from whom discovery is sought have twenty days to respond to discovery notices, enforceable discovery notices or requests must be served by the party seeking discovery within forty days after notification is served pursuant to § 12.26 (a), (b), or (c), unless that party is granted an extension of time.

[42] Section 12.302 of the final rules also provides that if no Administrative Law Judge has been assigned to the case, or if the assigned judge is otherwise unavailable, at the time that a motion is filed pursuant to § 12.302, "the Chief Administrative Law Judge or such other Administrative Law Judge as the Chief Judge may designate" shall rule on the motion within ten days after it is forwarded by the Proceedings Clerk.

[43] Section 12.312 requires an Administrative Law Judge, if an oral hearing is ordered to be held, to issue an order requiring the parties in advance of the hearing to sumit a memorandum setting forth a statement of all issues to be tried at the hearing, an identification of each witness expected to be called by that party, and a summary of the testimony each witness is expected to provide. After receiving such memoranda, the Judge may issue an order reflecting

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The Commission, however, does not agree that a finding that the summary disposition procedure is inappropriate necessarily leads to a conclusion that the Administrative Law Judge cannot make fair credibility determinations based upon the documentary proof submitted by the parties.[44] The Commission believes that in some cases where genuine issues of material fact exist, the nature of the documentary proof submitted in the proceeding can be so convincing or persuasive as to permit fair credibility determinations to be made on some or all of the issues in the proceeding without the need for oral testimony. The Commission believes that the formal decisional procedure would be more efficient and expeditious if the Administrative Law Judge were authorized in such cases to order the parties to submit proof only in documentary form concerning such issues. Therefore it has determined to adopt new § 12.311 which authorizes an Administrative Law Judge to dispose of some or all of the issues in the proceeding without an oral hearing if he determines "that the documentary proof and other tangible forms of proof submitted by the parties are sufficient to permit resolution of some or all of the factual issues in the proceeding without the need for oral testimony."

The Commission also agrees with commentors that, where an oral hearing is held, an opportunity to assess the demeanor of witness while testifying during direct examination can assist the Administrative Law Judge in making a determination concerning the credibility of such a witness. The Commission believes that the value that oral direct testimony may hold for enabling the Administrative Law Judge to make complete appraisals of witnesses' credibility in some cases will outweigh the benefit of whatever time would be saved by requiring direct proof to be submitted only in documentary form. Accordingly, the Commission has adopted § 12.312 which, as the general rule, authorizes parties to present oral direct testimony, but which also authorizes the Administrative Law Judge, in his discretion and to expedite the hearing, to order that the direct testimony of the parties and their witnesses be presented in documentary form only.[45]

The Commission also proposed a rule which would have restricted the possible locations for oral hearings to "one of the twelve regional cities in which the United States Circuit Courts of Appeals are situated." Proposed rule § 12.318(b). The Commission in § 12.312(b) has adopted a rule which specifically enumerates twenty cities as possible locations for hearings.[46] Limiting the number of locations where oral hearings may be held is expected to increase the number of cases that, within a given period of time, will be heard in the same location. The restriction on the number of cities where oral hearings may be held will also minimize the different locations to which an Administrative Law Judge must travel, which, in turn, should minimize the amount of time a judge will have to devote to travel. The limitation of the location of possible hearing sites will also result in a significant savings to the Commission's reparations budget concerning money expended for travel by an Administrative Law Judge.

The Commission does not intend its restriction on the location of hearing sites to impose an unreasonable burden on the parties' ability to appear at an oral hearing.[47] Accordingly, in § 12.312(b), the Commission has authorized an Administrative Law Judge, in any case where a party avers that none of the twenty cities specified in that rule is located within 300 miles of his principal residence, waive the rule, and, upon giving due regard for the convenience of all of the parties, order that the hearing be held in a more convenient location. Section 12.313(b) also authorizes the Director of the Office of Proceedings, for reasons of administrative economy or practical necessity, to direct that the oral hearing be held in a location other than twenty cities specified in § 12.312(b).

The final rules have also modified the proposed rules concerning interlocutory review. Pursuant to new § 12.310(a)(4), a party may file an application for interlocutory review, even though a judge has not certified the matter, if the ruling appealed from involves controlling questions of law or policy, an immediate appeal may materially advance the ultimate resolution of the issues in the proceeding, subsequent reversal of the ruling would cause unnecessary delay or expense to the parties, and, in addition extraordinary circumstances are shown to exist.

This new provision does not render the certification requirement of § 12.309(a)(3) superfluous. An uncertified application for interlocutory review can be denied by the Chief of the Opinions Section pursuant to delegated authority in § 12.408, discussed, *infra*, without the need for formal consideration by the Commission. Section 12.309(b) also prescribes new content requirements for applications for interlocutory review. New § 12.309(c) makes clear that the Commission denial of an application for interlocutory review will not preclude the filing party from reasserting any arguments made in the application in a subsequent appeal of the initial decision.

Pursuant to § 12.314 of the final rules, as soon as practicable after parties have concluded their submissions of proof (including an oral hearing, if one is

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the contents of such memoranda and such order, unless modified, shall control the scope of the issues to be tried at the oral hearing.

[44] The standard for whether a grant of summary disposition is appropriate is whether there is no genuine issue as to any material fact and a party is entitled to a decision as a matter of law. See §§ 12.207, 12.310.

[45] The Commission also proposed a rule that would have preserved the opportunity of any party who decided not to attend an oral hearing, and who filed a notice of appearance at least seven days prior to the date of the hearing, to propose findings of fact based on the record in the proceeding. See proposed rule § 12.318(c)(2). This proposed rule was very similar to a rule in effect under the Commission's former reparation rules. See 17 CFR 12.71(c)(2) (1983). One commentor indicated that a party who announced his intention not to attend an oral hearing should not be permitted to file a post hearing brief. The Commission agrees with this comment. Parties who decline to attend an oral hearing, and thereby fail to submit to cross examination, may deprive the factfinder of a valuable opportunity to determine the credibility of that party's testimony. The Commission does not believe that such a party should have an opportunity to propose findings and conclusions that are based on a testimonial record made without that party's participation. Accordingly, the Commission has not adopted any rule permitting parties who fail to appear at an oral hearing to file post hearing briefs.

[46] These twenty cities, some of which serve as alternative sites for United States Courts of Appeals, are: Albuquerque, N.M.; Atlanta, Ga.; Boston, Mass.; Chicago, Ill.; Cincinnati, Ohio; Columbia, S.C.; Denver, Colo.; Houston, Tex.; Kansas City, Mo.; Los Angeles, Cal.; Minneapolis, Minn.; New Orleans, La.; New York, N.Y.; Oklahoma City, Okla.; Phoenix, Ariz.; San Diego, Cal.; San Francisco, Cal.; Seattle, Wash.; St. Petersburg, Fla.; and Washington, D.C.

[47] The Commission also received a request from one commentor that the Commission set forth its view concerning the enforceability of a pre-dispute venue agreement between a customer and a registrant stipulating that if a dispute ever arises between them resulting in an oral hearing in reparations, the customer will appear at an oral hearing held at a location designated in the agreement, and that the customer will be reimbursed for travel expenses only if the customer prevails in the reparation proceeding. The Commission does not believe that commodity customers should be permitted to waive, in an advance of a dispute with a registrant, the privilege of having a convenient venue for an oral hearing in a formal decisional proceeding. Therefore the Commission will not consider any such pre-dispute venue agreements to be binding upon the parties. On the other hand, if all parties to a formal decisional proceeding, after an answer is filed, execute an agreement that the venue of an oral hearing shall be one of the twenty cities specified in § 12.312(b), the Commission will regard such an agreement to be binding on the parties.

held), the Administrative Law Judge is required to issue an initial decision. Like an initial decision rendered in a summary decisional proceeding, an initial decision rendered in a formal decisional proceeding must be accompanied by a statement of findings of fact and conclusions of law, may include a reparation award and, if appropriate, an award of prejudgment interest and costs (including reasonable attorney's fees), and is appealable to the Commission.[48] Section 12.315 provides that any party who has claimed damages in excess of $10,000 in order to gain access to the formal decisional procedure may be assessed the cost of the transcript of the oral hearing as well as the cost of instituting te proceeding (*i.e.*, the $200 filing fee), if that party is ultimately adjudged to be entitled to an award that does not exceed $10,000.

H. Default Proceedings and Parallel Proceedings

Under the Commission's former reparation procedure, any party who failed to file an answer, or a reply to a counterclaim, or to appear at an oral hearing, could be adjudged to be in default. Under the former default procedure, a presiding officer could make findings and conclusions, and award damages, based on the record as it then existed. The Commission's former default procedure authorized the presiding officer to set aside his default order "at any time for good cause," and permitted defaulted parties to file a motion to set aside a default judgment within a reasonable time afer the default order was issued. In its proposed rules, the Commission proposed a default procedure very similar to its former default procedure, except that it provided (1) that defaults would be handled by the Proceedings Officer, (2) that motions to set aside a default order could not be filed after the date on which the order would become the final decision and order of the Commission, and (3) that a Proceedings Officer, acting on his own motion, could set aside a default order only before it became final. The Commission received no comment on this rule other than objections to the use of a Proceedings Officer for default purposes.

The Commission has reconsidered its proposed default rule, and is concerned that the rule prescribes no standards for setting aside default orders that are not final, and makes no provision for the setting aside of default orders that, although final, were entered without jurisdiction, by fraud or mistake, or as the result of a party's excusable neglect. Accordingly, the Commission has adopted new § 12.23 which prescribes the procedure for setting aside orders of default,[49] and which differentiates between final and nonfinal orders.

Under § 12.23, a motion to set aside a default order shall be made to the official who issued the order. If the order has not become final by the time the motion is filed, the moving party need only set forth in his motion the reasons why the act or omission for which he was defaulted was not willful, why there is a reasonable likelihood of success of his claim or defense if heard on the merits, and why no prejudice would be sustained by other parties if the default is set aside. If the order has already become final at the time the motion is filed, the order may not be set aside unless it is shown by the defaulted party that he should be relieved from the default order because of fraud perpetrated upon a decisionmaking official or the Commission, mistake, or excusable neglect, or because the order is void for want of jurisdiction. For any ground other than want of jurisdiction, a motion to set aside a final default order must be filed within one year after that order was issued.

The Commission also proposed a rule that would change its policy concerning reparation proceedings in which the claims made by reparation complainants are the subject of parallel proceedings before other tribunals, or in which one or more of the respondents have become involved in receivership or bankruptcy proceedings. The Commission's former policy was to stay such proceedings. See 41 FR 3994 (January 27, 1976). Under its proposed rule changing the policy, the Commission would dismiss without prejudice a reparation proceeding (or claim), once it is learned that, at the time when the reparation complaint was filed, the same claim alleging a violation of the Commodity Exchange Act or the Commission's regulations was the subject of a pending arbitration or civil court proceeding based on the same facts and against one or more of the same respondents. Proposed rule § 12.23. This rule would not affect a customer's rights under Commission regulation § 180.3(b)(3), 17 CFR 180.3(b)(3) (1983), so that a customer who is notified of his broker's intention to invoke arbitration under a pre-dispute agreement would still have forty-five days in which to elect to proceed in reparations.

Where a receivership involving one or more respondents would result in the resolution of customer claims against the subjects of the receivership, the Commission proposed to dismiss without prejudice from the reparation proceeding those respondents who are the subject of the receivership. The Commission also proposed to dismiss without prejudice from a reparation proceeding any respondent who became a debtor in a bankruptcy proceeding, but would continue to stay reparation proceedings in which a respondent became a debtor in the case of an involuntary petition filed pursuant to the Bankruptcy Code, 11 U.S.C. 303, until the petition had been dismissed or an order for relief was issued. The proposed rule implementing this change of policy would apply only as to reparation claims or proceedings which have yet to result in an initial decision on the merits of the claims in the proceeding.

As proposed, a parallel proceeding would include, *inter alia*, an arbitration or civil court proceeding in which one or more claims alleging violations of the Commodity Exchange Act are at issue, which is pending at the time the reparation complaint is filed, and which is based on the same facts and against one or more of the same parties named as respondents in the reparation complaint. The Commission received one comment concerning this proposal that indicated that a parallel proceeding should include arbitration or civil court proceedings that meet the description above, except that they do not involve claims alleging violations of the Commodity Exchange Act.

The Commission is cognizant that concerning private claims accruing on and after January 11, 1983, those which arise under the Commodity Exchange Act may be pursued in only one judicial forum, U.S. district court. If the Commission were to adopt this commentor's suggestion, an action instituted by a respondent in a state court proceeding based on the same facts, *e.g.* for declaratory judgment or a debit balance claim, would operate to force would-be reparations complainants to pursue their Commodity Exchange Act-related claims in a more costly forum, U.S. district court. Because the Commission has never intended to divest a complainant in those circumstances of his right to pursue his Commodity Exchange Act-related claims in reparations, it has determined not to adopt the commentor's recommendation, at least where the complainant in reparations was not

[48] The factors that would warrant an award of prejudgment interest and of reasonable attorney's fees in a formal decisional proceeding are the same as the factors discussed in notes 37 and 38, *supra*, concerning summary decisional proceedings.

[49] All orders of default, *i.e.*, those entered either before or after a proceeding had commenced pursuant to § 12.26 would be subject to this rule.

responsible for instituting the parallel proceeding in state court.

The Commission has adopted the commentor's suggestion where the complainant in reparations was responsible for instituting the parallel proceeding. Thus, if the complainant in reparations was responsible for instituting an arbitration or civil court proceeding that otherwise satisfies § 12.24(a)(1), dismissal under § 12.24 would be appropriate even though the complainant had not asserted his CEA-related claims in such a proceeding.[50]

New § 12.24 also includes an additional new category of parallel proceeding which contemplates a parallel federal judicial proceeding that would be governed by Fed. R. Civ. P. 13(a) requiring the complainant in reparations to assert all of his CEA-based claims as counterclaims in that proceeding. Section 12.24(a)(1)(iii). If a compulsory counterclaim rule is operative in such a federal judicial proceeding, the Commission interprets new § 12.24(a)(iii) as authorizing dismissal of the reparation complaint or of the entire proceeding, without prejudice.

Concerning § 12.24 (a)(2) and (a)(3), these provisions are intended to permit expeditious resolutions of customer claims by dismissing from the reparation proceeding respondents who by their presence may create the necessity for a stay of the entire reparation proceeding, see 11 U.S.C. 362, and against whom the customer may pursue his claim in a more appropriate forum, *i.e.* in a judicial proceeding against the respondent in receivership or in bankruptcy. The Commission is aware that in certain situations dismissal of a debtor from a reparation proceeding may create undue prejudice to a particular customer or debtor; *e.g.*, a statute of limitations may preclude a complainant from filing his claims against the respondent in receivership, or in bankruptcy. Accordingly, § 12.24(e) affords any party an opportunity to seek a different result in a particular case at any time before a § 12.24 (c) or (d) order becomes effective.

The Commission does not believe that it is necessary to make the application of § 12.24(d), which authorizes dismissal from a reparation proceeding without prejudice a respondent who has become subject to receivership or bankruptcy proceedings, contingent upon the issuance of a stay order as to that respondent in the receivership or the bankruptcy. The provisions of § 12.24(d) authorizing dismissal from reparations respondents in receivership would only apply where the order establishing the receivership contemplated the resolution of customer claims within the receivership.[51] In a bankruptcy proceeding, a stay of all administrative (including reparation) proceedings would be automatic, 11 U.S.C. 362(a), and not dependent upon an affirmative order issued by the Bankruptcy Court. Should the Bankruptcy Court lift the automatic stay before a debtor-respondent is dismissed pursuant to the § 12.24(d), the Commission would allow the affected reparation proceeding to continue to a final resolution.

I. Commission Review of Decisions

In its proposed rules, the Commission proposed to modify its rules by which parties could obtain Commission review of initial decisions. Under the Commission's former reparation procedure, parties were able to seek Commission review of an initial decision by filing an application for review within fifteen days after being served with an initial decision. In the application, parties were required to specify issues presented for review and provide a summary of the facts and argument which demonstrate why Commission review was necessary. If the Commission determined that review was not necessary "to resolve an important issue of law or public policy," it could deny review by issuing an order to that effect. If none of the parties filed an application for review, the Commission could nevertheless take review of an initial decision on its own motion 30 days after service thereof.

The Commission proposed to change this procedure to afford aggrieved parties a right to appeal the initial decision by filing a notice of appeal within fifteen days after service of the initial decision. The notice of appeal would need only contain a very brief expression of the appealing party's intention to appeal the initial decision. After timely filing a notice of appeal, the appeal would not be perfected, and hence, subject to dismissal, unless within 30 days after filing a notice of appeal the appealing party filed an appeal brief, paid an appellate filing fee in the amount of $50, and complied with the appeal bond requirement, if any.[52] If no party filed an appeal, the Commission would still be authorized to review an initial decision by taking review on its own motion within thirty days after the initial decision is served. Unless the Commission took review on its own motion, the proposed rules provided that the timely filing and perfecting of an appeal to the Commission would be mandatory prerequisite to judicial review of a final reparations decision of the Commission.

The proposed rules also authorized the Commission, upon its own motion or upon written application by a party, to reopen a hearing to receive additional evidence. At the conclusion of the Commission's consideration of the issues on appeal, the Commission could render an order of summary affirmance, or a more expansive opinion and order, either of which would constitute the final decision and order of the Commission effective upon service. The proposed rules also afforded parties, within seven days after service of a final decision, the opportunity to file a petition for Commission reconsideration of the final decision which was required to be confined to new questions raised by the final decision concerning which the petitioner had no prior opportunity to argue before the Commission.

Concerning these proposed rules, commentors indicated that the time allowed for filing a notice of appeal (*i.e.*, within fifteen days after service of the initial decision) and for filing an appeal brief (*i.e.*, within thirty days after the filing of a notice of appeal) should be enlarged. Citing a potential for delay, commentors indicated that the Commission should not adopt a rule affording parties an opportunity to seek leave to adduce additional evidence. Other commentors indicated that the time allowed for the filing of a petition for reconsideration should be enlarged to thirty days, that the time within which an award must be satisfied should be increased to thirty days, that the appellate filing fee should be raised in order to discourage the filing of frivolous appeals.

The Commission believes that its change of appellate review rules from an application for review procedure to an appeal procedure will be more efficient and expeditious because it will afford aggrieved parties the opportunity to

[50] The Commission also holds the view that an arbitration proceeding otherwise satisfying § 12.24(a)(1) commenced pursuant to an enforceable pre- or post-dispute agreement shall be deemed a parallel proceeding "commenced at the instance of the complainant in reparations" within the meaning of § 12.24(a)(1)(i), regardless of whether the complainant in reparations actually took the initiative in commencing the arbitration proceeding.

[51] The Commission believes that the court, which appointed the receiver, and the receiver, as the person charged to marshall the assets and develop a plan of repayment to creditors and customers, are in a better position than the Commission to resolve customer claims against the subjects of the receivership.

[52] Under the proposed rules, parties would be required to file an appeal bond if so ordered in the initial decision. See, e.g., Proposed rules §§ 12.320(b)(6) and 12.401(b).

appeal as a matter of right, and will spare the Commission from having to consider the merits of an initial decision and an application for review separately before determining whether to review the issues on appeal and render its own decision in the case. The new appeal procedure would also relieve a burden imposed on parties by the Commission's former reparation rules that required parties to file a detailed and time-consuming application for review which often resembled a brief, followed by, if review was granted, a brief in support of the issues raised in the application for review. Under § 12.401 as adopted, parties would only have to file a single brief.

The Commission does not believe that the fifteen day period proposed for filing a notice of appeal needs to be enlarged because, as indicated earlier, a notice of appeal need only consist of a very brief expression of the appealing party's intent to appeal the initial decision, and therefore, requires very little effort on the part of such party to prepare. Because the Commission has rarely found an appendix to appellate briefs to be useful to its review, it has not adopted its proposed rule that would have required parties to an appeal to designate the contents of an appendix. Because of the much greater commitment of time needed to prepare a brief, the Commission has determined in § 12.401(c) to enlarge—from twenty to thirty days—the allowed time following the filing of an appeal brief within which a non-appealing party may file an answering brief.

The Commission believes that its proposed reconsideration procedure would create an unnecessary re-review procedure that would only delay the Commission's review of other cases on its appellate docket. Accordingly, the Commission has determined not to adopt its proposed rule allowing parties to file a petition for reconsideration of a Commission opinion and order, or a Commission order of summary affirmance.

The Commission, in § 12.405, has also determined to adopt its proposed rule authorizing the Commission to grant leave to adduce additional evidence. The Commission believes that the standards authorizing the Commission to grant such leave will be difficult for parties to satisfy,[53] and thus this rule should not create a significant potential for delay. The Commission also does not believe that the time within which an award must be satisfied should be enlarged from the proposed fifteen days to thirty days. One of Congress' purposes in fashioning the 1982 amendments to Section 14 of the Act was to achieve more expeditious recoveries for reparation claims.[54] In view of that purpose, the Commission finds no justification for enlarging the time for satisfying a reparation award to thirty days.

The Commission also does not find it appropriate to raise its proposed filing fee of $50 for appeals to the Commission in order to discourage parties from filing frivolous appeals. The Commission's purpose in proposing the appellate filing fee was to offset some of the Commission's costs associated with administering its appellate docket, not to discourage appeals. The Commission believes that a reasonable likelihood of a prejudgment interest award will adequately deter parties from filing frivolous appeals. Accordingly, the Commission in § 12.401(a) has adopted its proposed appellate filing fee of $50.[55]

The proposed rules would also have required an appealing party, in order to perfect his appeal, to file a bond if such party was so ordered in the initial decision. Proposed rule §12.401(b). Although no comments were received concerning the appeal bond requirement of proposed rule § 12.401(b), the Commission has reconsidered the need for a rule requiring an appealing party to file a bond in the amount sufficient to cover award, interest, costs and attorney's fees. In proposing this bond requirement, the Commission was mainly concerned with respondents who would become insolvent before the Commission issued its decision on appeal. However, because the Commission expects appeals to be resolved more expeditiously under the final rules, and because non-registrants, a class of respondents most likely to become insolvent during an appeal, are no longer amenable to suit in reparations,[56] the Commission does not believe that its appeal bond requirement is necessary. Therefore, it has declined to adopt any rule requiring appealing parties to file a bond.

The Commission, in § 12.408, has adopted a rule delegating to the Chief of the Opinions Section authority to issue orders which may dispose of or otherwise affect cases on the Commission's review docket. Section 12.408 authorizes the Chief of the Opinions Section or such other person under his direction as he may designate from time to time: to decide miscellaneous procedural motions directed to the Commission after an initial decision has been filed; to remand initial decisions, default or other dispositive orders, (1) where clarification or supplementation thereof is needed, (2) where a ministerial act necessary to the proper conduct of the proceeding has not been performed, and (3) where a motion to set aside a default order has been filed; to dismiss any appeal where it has not been filed or perfected in accordance with § 12.401; to strike any filing that does not meet the requirements of, or is not perfected in accordance with, the Part 12 Reparation Rules; and to enter orders that will facilitate or expedite Commission review of an initial decision or other dispositive order.

Concerning interlocutory matters, the Chief in § 12.408 has been delegated authority to deny applications for interlocutory review (not concerning the suspension of an attorney from participating in a reparation proceeding or the disqualification of a decisionmaker) where the ruling sought to be appealed has not been certified by the Administrative Law Judge, or the application has not been filed in accordance with § 12.309 of the rules. A party dissatisfied with any such ruling by the Chief of the Opinions Section is authorized by § 12.408(c) to file with the Commission a petition for reconsideration within seven days after service of the ruling.

Section 12.408 is expected to facilitate and expedite the Commission's administration of Subpart F of the rules, as well as of § 12.309, governing interlocutory review. Section 12.408 vests in the Chief of the Opinions Section the authority, without the need for separate formal consideration by the Commission, to dispose of petitions or filings which should be granted or denied for strictly technical or procedural reasons. Under the Commission's former reparation rules, the Commission formally considered many petitions for relief that were filed out of time, not authorized by the reparation rules, or otherwise flawed for

[53] The Commission will not grant such leave unless the failure to adduce evidence at the hearing was attributable to excusable neglect, or to circumstances under which the applying party, after making reasonable efforts to do so, would not reasonably be expected to acquire such evidence in time for the hearing.

[54] *See, e.g.*, H.R. Rep. No. 565, Pt. 2, at 32, 97th Cong., 2d Sess. (1982).

[55] So that aggrieved parties will give careful consideration, at the earliest possible date, to the advisability of appealing to the Commission an initial decision, the Commission in § 12.401(b) has determined to require an appealing party to file the $50 appellate filing fee at the time he files a notice of appeal—not when he files an appeal brief as proposed.

[56] See note 2, *supra*.

technical or procedural reasons (*e.g.*, not accompanied by a certificate of service).

The Commission believes that by discontinuing its former practice of devoting formal attention to matters not properly on its appellate docket it will be able to attain earlier dispositions of its other appellate reparation cases. Under § 12.408, the Chief of the Opinions Section has been delegated authority to consider all filings directed to the Commission concerning a case in which an initial decision has been rendered, or in which interlocutory review is sought. If any such filing is itself defective, or points up a ministerial defect in an initial decision or similar dispositive order, the Chief pursuant to § 12.408 delegation may rule on the filing without formal consideration by the Commission. In any case in which he believes it appropriate, the Chief is authorized in § 12.408(b) to submit the matter to the Commission for its consideration.

J. Other Miscellaneous Matters

In proposed rule § 12.1(c), the Commission indicated that to the extent that its new rules have retained without substantive modification any of the Commission's former reparation rules, the new rules shall be interpreted consistently with prior Commission interpretations of their counterparts in the former rules. The Commission has reconsidered whether it should bind itself by a rule to follow prior Commission interpretations of its rules, especially when those rules now apply to different procedures. Because the Commission's interpretation of its former rules should not necessarily be applied mechanically to its new rules, the Commission has determined not to adopt § 12.1(c) as proposed. As a matter of policy, however, the Commission expects to interpret the new rules consistently with its interpretations of identical or substantially similar provisions of the obsolete rules in a given case so long as the purposes of Section 14(b) of the Act, *i.e.*, the efficient and expeditious administration of reparation cases, would be served thereby.

The Commission has adopted a new § 12.1(c) which prescribes the effective date, April 23, 1984, for these rules, as well as the applicability of these rules to reparation cases that are pending on that date. Section 12.1(c) provides that these final rules will apply in all respects to all reparation complaints filed on and after the effective date. Section 12.1(c) also indicates that Subpart F of these rules will apply to initial decisions served on and after the effective date, regardless of when the reparation complaint was filed. In addition, § 12.14, 12.21, 12.22, 12.23, 12.24 and 12.408 of these final rules apply to all reparation cases, including those pending on the effective date, regardless of when the complaint was filed. Except as otherwise provided above, § 12.1(c) provides that these rules will not apply to reparation complaints, and matters relating thereto, filed prior to the effective date, except that parties to a reparation case that was pending on that date may at any time before an initial decision is rendered, by written stipulation signed by all parties, elect to have the case heard pursuant to the voluntary decisional procedure. To the extent that these final rules do not apply to any aspect of a case that was pending on April 23, 1984, § 12.1(c) provides that the Commission's former reparation rules, 17 CFR Part 12 (1983), shall apply.

In order to simplify and make all-inclusive the body of rules applicable to an elected decisional procedure, the Commission has decided to repeat rules that are common to all three procedures in each set of rules, perhaps creating an appearance of length and complexity in the final rules viewed as a whole. However, parties who have elected one of the three procedures in most instances would have no need to refer to the rules applicable to the other two decisional procedures. Thus, the final rules should actually simplify the reparations procedure for the infrequent reparations litigant because such person would have less difficulty understanding and familiarizing himself with rules applicable to his elected procedure than he would under the Commission's former reparation rules.

III. The Regulatory Flexibility Act

In its preamble to the proposed rules, the Commission determined that insofar as the proposed Part 12 reparation rules related solely to agency organization, procedure and practice, they are not rules which are subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Nevertheless, because they do not impose regulatory obligations on commodity professionals and small commodity firms in addition to those required by Section 14(a) and other provisions of the Commodity Exchange Act prior to the 1982 amendments, and because they will only serve to streamline, simplify and expedite the Commission's former reparations process, the Commission does not expect its final rules to have a significant economic impact on a substantial number of small business entities.

This Part shall apply in its entirety to all reparation complaints, and all matters relating thereto, filed on and after April 23, 1984. Sections 12.14, 12.21, 12.22, 12.23, 12.24 and 12.408 of this Part shall apply to all reparation matters, including those pending on April 23, 1984, regardless of when the reparation complaint was filed. Subpart F of this Part shall apply to all proceedings in which initial decisions, or similar dispositive orders, are served on and after April 23, 1984. Except as indicated above, this Part shall not apply to reparation complaints filed before April 23, 1984, except that parties to a formal adjudicatory proceeding commenced pursuant to any such complaint may, at any time before the initial decision is rendered, by written stipulation executed by all parties, elect to have the case heard pursuant to Subpart C of this Part. To the extent that this Part does not apply to any matter on the Commission's reparations docket pending on April 23, 1984, 17 CFR Part 12 (1983) shall apply.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations.

17 CFR Part 12 is revised to read as follows:

PART 12—RULES RELATING TO REPARATIONS

Subpart A—General Information and Preliminary Consideration of Pleadings

Sec.

12.1 Scope and applicability of rules of practice relating to reparations.
12.2 Definitions.
12.3 Business address; hours.
12.4 Suspension, amendment, revocation and waiver of rules.
12.5 Computation of time.
12.6 Extensions of time; adjournments; postponements.
12.7 Ex parte communications in reparation proceedings.
12.8 Separation of functions.
12.9 Practice before the commission.
12.10 Service.
12.11 Formalities of filing of documents with the proceedings clerk.
12.12 Signature.
12.13 Complaint; election of procedure.
12.14 Withdrawal of complaint.
12.15 Notification of complaint.
12.16 Response to complaint.
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12.18 Answer; election of procedure.
12.19 Counterclaim.
12.20 Response to counterclaim; reply; election of procedure.
12.21 Voluntary dismissal.
12.22 Default proceedings.
12.23 Setting aside of default.
12.24 Parallel proceedings.
12.25 Filing fees.

Sec.
12.26 Commencement of a reparation proceeding.
12.27 Termination of consideration of pleadings.

Subpart B—Discovery

12.30 Methods of discovery.
12.31 Production of documents and tangible items.
12.32 Depositions on written interrogatories.
12.33 Admissions.
12.34 Discovery by a decisionmaking official.
12.35 Consequences of a party's failure to comply with a discovery order.
12.36 Subpoenas to compel discovery.

Subpart C—Rules Applicable to Voluntary Decisional Proceedings

12.100 Scope and applicability of rules.
12.101 Functions and responsibilities of the Judgment Officer.
12.102 Disqualification of Judgment Officer.
12.103 Filing of documents; subscription; service.
12.104 Amendments to pleadings; motions.
12.105 Submission of proof only in documentary or tangible form.
12.106 Final decision and order.

Subpart D—Rules Applicable to Summary Decisional Proceedings

12.200 Scope and applicability of rules.
12.201 Functions and responsibilities of the Judgment Officer.
12.202 Disqualification of Judgment Officer.
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12.204 Amended and supplemental pleadings.
12.205 Motions.
12.206 Pre-decision conferences.
12.207 Summary disposition.
12.208 Submissions of proof.
12.209 Oral testimony.
12.210 Initial decision.

Subpart E—Rules Applicable to Formal Decisional Proceedings

12.300 Scope and applicability of rules.
12.301 Functions and responsibilities of the Proceedings Officer.
12.302 Appeal of a discovery order issued by a Proceedings Officer.
12.303 Pre-decisoin conferences.
12.304 Functions and responsibilities of the Administrative Law Judge.
12.305 Disqualification of Administrative Law Judge.
12.306 Filing of documents; subscription; service.
12.307 Amended and supplemental pleadings.
12.308 Motions.
12.309 Interlocutory review by the Commission.
12.310 Summary disposition.
12.311 Disposition of proceeding or issues without oral hearing.
12.312 Oral hearing.
12.313 Subpoenas for attendance at an oral hearing.
12.314 Initial decision.
12.315 Consequences of overstating damages claims not in excess of $10,000.

Subpart F—Commission Review of Decisions

Sec.
12.400 Scope and applicability of rules.
12.401 Appeal to the Commission.
12.402 Appeal of disposition of less than all claims or parties in a proceeding.
12.403 Commission review on its own motion.
12.404 The record of proceedings.
12.405 Leave to adduce additional evidence.
12.406 Final decision of the Commission.
12.407 Satisfaction of reparation award; enforcement; sanctions.
12.408 Delegation of authority to Chief of the Opinions Section.

Authority: 7 U.S.C. 12a(5), 18(b) (1982).

Subpart A—General Information and Preliminary Consideration of Pleadings

§ 12.1 Scope and applicability of rules of Practice relating to reparations.

(a) *Part 12 Reparation Rules.* These rules of practice are applicable to reparation applications filed pursuant to section 14 of the Commodity Exchange Act, as amended, 7 U.S.C. section 18. The rules in this Part shall be construed liberally so as to secure the just, speedy and inexpensive determination of the issues presented with full protection for the rights of all parties.

(b) *Other rules of practice.* Unless specifically made applicable, other Rules of Practice promulgated under the Commodity Exchange Act, as amended, shall not apply to reparation matters.

(c) *Applicability of these Part 12 Reparation Rules.* These rules shall apply in their entirety to all reparation complaints, and matters relating thereto, filed on and after April 23, 1984. Sections 12.14, 12.21, 12.22, 12.23, 12.24 and 12.408 of these rules shall apply to all reparation matters, including those pending on April 23, 1984 in the **Federal Register**, regardless of when the reparation complaint was filed. Subpart F of these Rules shall apply to all proceedings in which initial decisions, or similar dispositive orders, are served on and after April 23, 1984. Unless otherwise specifically provided in this rule, these Part 12 Reparation Rules shall not apply to reparation complaints filed before April 23, 1984, except that parties to a formal adjudicatory proceeding commenced pursuant to any such complaint may, at any time before the initial decision is rendered, by written stipulation executed by all parties, elect to have the case heard pursuant to Subpart C of these rules. To the extent that these Part 12 rules do not apply to any matter on the Commission's reparations docket pending on April 23, 1984, the Commission's former reparation rules, 17 CFR Part 12 (1983), shall apply.

§ 12.2 Definitions.

For purposes of this part:

(a) "Act" means the Commodity Exchange Act, as amended, 7 U.S.C. 1, *et seq.;*

(b) "Administrative Law Judge" means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) "Commission" means the Commodity Futures Trading Commission;

(d) "Commission decisional employee" means an employee or employees of the Commission who are or may reasonably be expected to be involved in the decisionmaking process any proceeding, including, but not limited to:

(1) A Judgement Officer and a Proceedings Officer;

(2) Members of the personal staffs of the Commissioners, but not the Commissioners themselves;

(3) Members of the staffs of the Administrative Law Judges, but not an Administrative Law Judge;

(4) Members of the staffs of the Proceedings Officers;

(5) Members of the staffs of the Judgment Officers;

(6) Members of the Opinions Section;

(7) Members of the staff of the Office of Proceedings; and

(8) Other Commission employees who may be assigned to hear or to participate in the decision of a particular matter.

(e) "Complainant" means a person who, individually or jointly with others, has applied to the Commission for a reparation award pursuant to Section 14 (a) of the Act, but shall not include a cross claimant or any other type of third party claimant. The term "complainant" under these rules applies equally to two or more persons who have applied jointly for a reparation award;

(f) "Complaint" means any document which constitutes an application for a reparation award pursuant to Section 14(a) of the Act, regardless of whether it is denominated as such;

(g) "Counterclaim" means an application for a reparation award by a respondent against a complainant which satisfies the requirements of § 12.19 of these rules. A counterclaim does not mean a cross claim or other type of third party claim;

(h) "Director of the Office of Proceedings" means an employee of the Commission who shall serve as the administrative head of that Office, with responsibility and authority to assure that the Part 12 Reparation Rules are administered in a manner that will effectuate the purposes of Section 14(b)

of the Act. The Director is authorized to convene meetings of all personnel in the Office of Proceedings, including Administrative Law Judges and their personally assigned law clerk. The Director shall have the authority to delegate his duties to administer §§12.15, 12.24, 12.26 and 12.27 of these rules, and, shall have the authority to assign and, if necessary, reassign the duties of, and set reasonable standards for performance for, all personnel in the Office, including the Proceedings Officer and Judgment Officers, but not including Administrative Law Judges and their personally assigned law clerk;

(i) "*Ex parte* communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include: (1) A discussion, after consent has been obtained from all of the named parties, between a party and a Judgment Officer, Proceedings Officer, or Administrative Law Judge, or the staffs of the foregoing, pertaining solely to the possibility of settling the case without the need for a decision; (2) requests for status reports, including questions relating to service of the complaint, and the registration status of any persons, on any matter or proceeding covered by these rules: or (3) requests made to the Office of Proceedings or the Opinions Section for interpretation of these rules;

(j) "Formal decisional procedure" means, where the amount of damage claimed exceeds $10,000, exclusive of interest and costs, a procedure elected by the complainant or a respondent where the parties may be granted an oral hearing. A formal decisional proceeding is governed by Subpart E of these rules;

(k) "Summary decisional procedure" means, where the amount of damages claimed does not exceed $10,000, exclusive of interest and costs, a procedure elected by the complainant or the respondent wherein an oral hearing need not be held and proof in support of each party's case may be supplied in the form and manner prescribed by § 12.208 of these rules. A summary decisional proceeding is governed by Subpart D of these rules;

(l) "Voluntary decisional procedure" means, regardless of the amount of damages claimed, a procedure which the complainant and the respondent have chosen voluntarily to submit their claims and counterclaims, allowable under these rules, for an expeditious resolution by a Judgment Officer. By electing the voluntary decisional procedure, parties agree that a decision issued by a Judgment Officer shall be without accompanying findings of fact and shall be final without right of Commission review or judicial review. A voluntary decisional proceeding is governed by Subpart of C of these rules;

(m) "Hearing" means that part of a proceeding which involves the submission of proof, either by oral presentation or written submission;

(n) "Interested person" means any party, and includes any person or agency permitted limited participation or to state views in a reparations proceeding, or other person who might be adversely affected or aggrieved by the outcome of a proceeding (including the officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives of such persons), and any other person having a direct or indirect pecuniary or other interest in the outcome of a proceeding;

(o) "Judgment Officer" means an employee of the Commission who is authorized to conduct the proceeding and render a decision in a summary decisional proceeding or a voluntary decisional proceeding. In appropriate circumstances, the functions of a Judgment Officer may be performed by an Administrative Law Judge;

(p) "Office of Proceedings" means that office within the Commission comprised of the Administrative Law Judges, Proceedings Officer, Judgment Officers, the Director of that office, the Proceedings Clerk, and members of the staffs of the foregoing, which administers these Part 12 Reparation Rules, other than the rules authorizing direct review by the Commission;

(q) "Opinions Section" means the members of the Commission's staff who provide assistance to the Commission in its direct review of any proceeding conducted pursuant to these rules;

(r) "Order" means the whole or any part of a final procedural or substantive disposition of a reparation proceeding by the Commission, an Administrative Law Judge, a Judgment Officer, a Proceedings Officer, or the Proceedings Clerk;

(s) "Party" means a complainant, respondent or any other person or agency named or admitted as a party in a reparation matter;

(t) "Person" means any individual, association, partnership, corporation or trust;

(u) "Pleading" means the complaint, the answer to the complaint, any supplement or amendment thereto, and any reply to the foregoing;

(v) "Proceeding" means a case in which the pleadings have been forwarded, and in which a procedure has been commenced pursuant to § 12.26(a), (b), or (c);

(w) "Proceedings Officer" means an employee of the Commission who is authorized to administer the procedures prescribed under §§ 12.22, 12.301, and 12.303 of these rules. In appropriate circumstances, the functions of a Proceedings Officer may be performed by an Administrative Law Judge;

(x) "Proceedings Clerk" means that member of the Commission's staff in the Office of Proceedings who shall maintain the Commission's reparations docket, assign reparation cases to an appropriate decisionmaking official, and act as custodian of the records of proceedings;

(y) "Registrant" means any persons who (1) was registered under the Act at the time of the alleged violation; (2) is subject to reparation proceedings by virtue of Section 4m of the Commodity Exchange Act, regardless of whether such person was ever registered under the Act; or (3) is otherwise subject to reparation proceedings under the Act;

(z) "Respondent" means any person or persons against whom a complainant seeks a reparation award pursuant to Section 14(a) of the Act; and

(aa) "Reparation award" means the amount of monetary damages a party may be ordered to pay.

§ 12.3 Business address; hours.

The principal office of the Commission is located at 2033 K Street, NW., Washington, D.C. 20581. It is open each day, except Saturdays, Sundays, and legal public holidays, from 8:15 a.m. until at least 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, D.C.

§ 12.4 Suspension, amendment, revocation and waiver of rules.

(a) *Suspension or change of rules.* These rules may, from time to time, be suspended, amended or revoked in whole or in part. Notice of such action will be published in the **Federal Register.**

(b) *Commission waiver of procedures.* In the interest of expediting decision or to prevent undue hardship on any party or for other good cause the Commission may order the adoption of expedited procedures, may waive any rule in this Part in a particular case, and may order proceedings in accordance with its direction upon a determination that no party will be prejudiced thereby, and that the ends of justice will be served. Reasonable notice shall be given to all parties of any action taken pursuant to this provision.

§ 12.5 Computation of time.

(a) *In general.* In computing any period of time prescribed by these rules or allowed by the Commission, the Director of the Office of Proceedings, a Judgment Officer, Proceedings Officer, or an Administrative Law Judge, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

Intermediate Saturday, Sundays, and legal holidays shall be excluded from the computation only when the period of time prescribed or allowed is less than seven (7) days.

(b) *Date of service of orders.* In computing any period of time involving the date of service of an order, the date of service shall be the date the order is served by the Proceedings Clerk, which, unless otherwise indicated, shall be the date stamped on the order by the Proceedings Clerk.

§ 12.6 Extensions of Time; Adjournments; Postponements.

(a) *In general.* Except as otherwise provided by law or by these rules, for good cause shown, the Commission, or a Judgment Officer, Proceedings Officer, Administrative Law Judge, or the Director of the Office of Proceedings, before whom a matter is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by the rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter, the Commission or one of the other officials mentioned above may set a time limit for that action.

(b) *Motions for extension of time.* Absent extraordinary circumstances, in any instance in which a time limit that has been prescribed for an action to be taken concerning any matter exceeds seven days from the date of the order establishing the time limit, requests for extension of time shall be filed at least five (5) days prior to the expiration of time limit and shall explain why an extension of time is necessary.

§ 12.7 Ex Parte Communications in Reparation Proceedings.

(a) *Prohibitions against ex parte communications.* (1) No interested person outside the Commission shall make or knowingly cause to be made to any Commissioner, Administrative Law Judge, or Commission decisional employee an *ex parte* communication relevant to the merits of a proceeding.

(2) No Commissioner, Administrative Law Judge, or Commission decisional employee shall make or knowingly cause to be made to any interested person outside the Commission an *ex parte* communication relevant to the merits of a proceeding.

(b) *Procedures for handling ex parte communications.* A Commissioner, Administrative Law Judge or Commission decisional employee who receives, or who makes or knowingly causes to be made, an *ex parte* communication prohibited by paragraph (b) of this section shall—

(1) Place on the public record of the proceeding—

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b) (1)(i) and (1)(ii) of this section; and

(2) Promptly give written notice of such communication and responses thereto to all parties to the proceedings to which the communication or responses relate.

(c) *Sanctions.* (1) Upon receipt of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of the prohibition contained in paragraph (a)(1) of this section, the Commission, Administrative Law Judge, or Judgment Officer may, to the extent consistent with the interests of justice and the policy of the Act, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(2) Any attorney or accountant who knowingly makes or knowingly causes to be made, or who knowingly solicits or knowingly causes the solicitation of, an *ex parte* communication which violates the prohibitions contained in paragraph (a) of this section may be deemed to have engaged in unprofessional conduct of the type proscribed by 17 CFR 14.8(c).

(3) Any Commissioner, Administrative Law Judge, or Commission decisional employee who knowingly makes or knowingly causes to be made, or who knowingly solicits or knowingly causes the solicitation of, an *ex parte* communication which violates the prohibitions contained in paragraph (a) of this section may be deemed to have engaged in conduct of the type proscribed by 17 CFR 140.735–3(b)(3).

(d) *Applicability of prohibitions and sanctions against ex parte communications.* (1) The prohibitions of this section against *ex parte* communications shall apply:

(i) To any person who has actual knowledge that a proceeding has been or will be commenced by order of the Commission; and

(ii) To all persons after public notice has been given that a proceeding has been or will be commenced by order of the Commission.

(2) The prohibitions of this section shall remain in effect until a final order has been entered in the proceeding which is no longer subject to review by the Commission or to appellate review by a court.

§ 12.8. Separation of functions.

(a) A Judgment Officer, Proceedings Officer, or Administrative Law Judge will not be responsible to or subject to the supervision or direction of any officer, employee, or agent of the Commission engaged in the performance of investigative or prosecutorial functions for the Commission.

(b) No officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of a Judgment Officer, Proceedings Officer, or Administrative Law Judge, except as a witness in the proceeding, without the express written consent of the parties to the proceeding. This provision shall not apply to the Commissioners.

§ 12.9. Practice before the Commission.

(a) *Practice.*—(1) By *non-attorneys.* An individual may appear *pro se* (on his own behalf); a general partner may represent the partnership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest Court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with provisions of Part 14 of this Chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Debarment of counsel or representative during the course of a proceeding.* (1) Whenever, while a proceeding is pending before him, a Judgment Officer or an Administrative Law Judge finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, such official may

order that such person be precluded from further acting as counsel or representative in the proceeding. An immediate appeal to the Commission may be taken from any such order, pursuant to the provisions of § 12.309, but the proceeding shall not be delayed or suspended pending disposition of the appeal; Provided, that the official may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(2) Whenever the Judgment Officer or Administrative Law Judge has issued an order precluding a person from further acting as counsel or representative in a proceeding, such official, within a reasonable time thereafter, shall submit to the Commission a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Commission should take respecting the appearance of such person as counsel or representative in other proceedings before the Commission.

(c) *Withdrawal of representation.* Withdrawal from representation of a party shall be only by leave of the decisionmaking official (or the Commission) before whom the proceeding is then pending. Such leave to withdraw may be conditioned on the attorney's (or representative's) submission of an affidavit averring that the party represented has actual knowledge of the withdrawal, and such affidavit shall include the name and address of a successor counsel (or representative) or a statement that the represented party has determined to proceed *pro se*, in which case, the statement shall include the address where that party can thereafter be served.

§ 12.10 Service.

(a) *General requirements.*—(1) *When service is required; number of copies.* One copy of all motions, petitions or applications made in the course of proceeding (unless made orally during a hearing), all proposed findings and conclusions (to the extent permitted by these rules), all notices of appeal, all briefs, and letters to the Commission, an employee thereof, or an Administrative Law Judge, shall be served by a party upon all other parties to the proceeding. This rule does not apply to a complaint filed pursuant to § 12.13 of these rules, which shall only be filed with the Commission.

(2) *Filing with the Proceedings Clerk; proof of service.* All documents which are required to be served upon a party shall be filed concurrently with the Proceedings Clerk, and shall meet the requirements as to form prescribed by §§ 12.11 and 12.12 of these rules. Unless otherwise provided in these rules a document shall be filed by delivering it in person or by mailing it, by first-class mail, post-paid, addressed to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. To be timely filed a document must be delivered, or mailed, by first-class mail, to the Proceedings Clerk within the time prescribed for filing. Proof of service of a document shall be made by filing with the Proceedings Clerk, simultaneously with the filing of the required document, an affidavit of service executed by any person 18 years of age or older or a certificate of service executed by an attorney-at-law qualified to practice before the Commission. The proof of service shall identify the persons served, state that service has been made, set forth the date of service, and recite the manner of service.

(3) *Service of orders and decisions.* A copy of all notices, rulings, opinions, and orders of the Proceedings Clerk, the Director of the Office of Proceedings, a Judgment Officer, Proceedings Officer, Administrative Law Judge, the Chief of the Opinions Section or the Commission shall be served by the Proceedings Clerk on each of the parties.

(b) *How service is made.* Service shall be made either by personal service or by first-class mail. Service shall be complete at the time of personal service or upon deposit in the mails of a properly addressed and post-paid document. Where service is effected by mail, the time within which the person served may respond thereto shall be increased by five (5) days. For the purposes of this Rule, service of any document by the Proceedings Clerk upon the Commission shall be regarded as service by mail.

(c) *Designation of person to receive service.* The first document filed in a proceeding by or on behalf of any party shall state on the first page thereof the name and post office address of the person who is authorized to receive service for him of all documents filed in the proceeding. Thereafter, service of documents shall be made upon the person authorized unless service on a different authorized person or on the party himself is ordered by a Judgment Officer, Proceedings Officer, Administrative Law Judge or the Commission, or unless the person authorized is changed by the party upon due notice to all other parties. Parties shall file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

§ 12.11 Formalities of filing of documents with the Proceedings Clerk.

(a) *Number of copies.* Unless otherwise specifically provided, an original and one conformed copy of all documents shall be filed with the Proceedings Clerk.

(b) *Title page.* All documents filed with the Proceedings Clerk must include at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the docket number (if one has yet been assigned by the Proceedings Clerk), the subject of the particular document and the name of the person on whose behalf the document is being filed. In the complaint the title of the proceeding shall include the names of all the complainants and respondents, but in documents subsequently filed it is sufficient to state the name of the first complainant and first respondent named in the complaint.

(c) *Paper, spacing, type.* All documents filed under the Reparation Rules shall be typewritten, mimeographed, printed, or, if a party is not represented by counsel, in plainly legible handwriting; shall be on one grade of good white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 11½ inches long; and shall be bound on the top only. They shall be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(d) *Signature.* The original copy of all papers must be signed in ink by the person filing the same or by his duly authorized agent or attorney.

(e) *Length and form of briefs.* All briefs filed with the Proceedings Clerk containing more than 10 pages shall include an index and a table of cases and other authorities cited. The date of each brief shall appear on its front cover or title page and on its signature page. No brief shall exceed 35 pages in length, except with the permission of the Commission, or the Judgment Officer or Administrative Law Judge, before whom the matter is then pending.

§ 12.12 Signature.

(a) *By whom.* All documents filed with the Commission shall be signed personally:

(1) By the person or persons on whose behalf they are tendered for filing;

(2) By a general partner, officer or director of a partnership, corporation, association, or other legal entity; or

(3) By an attorney-at-law having authority with respect thereto.

The Proceedings Clerk may require appropriate evidence of the authority of a person subscribing a document on behalf of another person.

(b) *Effect.* The signature on any document of any person acting either for himself or as attorney or agent for another constitutes certification by him that:

(1) He has read the document subscribed and knows the contents thereof;

(2) If executed in any representative capacity, it was done with full power and authority to do so;

(3) To the best of his knowledge, information, and belief, every statement contained in the document is true and not misleading; and

(4) The document is not being interposed for delay.

§ 12.13 Complaint; Election of procedure.

(a) *In general.* Any person complaining of a violation of any provision of the Act or a rule, regulation or order of the Commission thereunder by any person who is a registrant (as defined in § 12.2(y)) may, at any time within two years after the cause of action accrues, apply to the Commission for a reparation award by filing a written complaint which satisfies the requirements of this rule.

(b) *Form of complaint.* The form of each complaint filed under paragraph (a) of this section shall meet the following requirements—

(i) The name, residence address, and telephone number (during business hours) of the complainant;

(ii) The name, address, and telephone number, if known, of each person alleged in the complaint to have violated the Act or any rule, regulation or order thereunder;

(iii) If known, the specific provisions of the Act, rule, regulation, or order claimed to have been violated;

(iv) A complete description of complainant's case, including, but not limited to:

(A) A description of all relevant facts concerning each and every act or omission which it is claimed constitutes a violation of the Act; and

(B) A description of all facts which show or tend to show the manner in which it is claimed that the complainant was injured by the alleged violations;

(v) The amount of damages the complainant claims to have suffered and the method by which those damages have been computed;

(vi) A statement indicating whether an arbitration proceeding or civil court litigation, based on the same set of facts set forth and involving any party named as a respondent in the complaint, has been instituted, and whether such a proceeding has reached a final disposition or is presently pending;

(vii) A statement indicating whether any of the respondents is the subject of receivership or bankruptcy proceedings that are presently pending;

(viii) An election of a decisional procedure pursuant to Subpart C, D, or E of these rules. (A procedure pursuant to Subpart D may be elected only if the amount of damages claimed, exclusive of interest and costs, does not exceed $10,000. A procedure pursuant to Subpart E may be elected only if the amount claimed as damages, exclusive of interest and costs, exceeds $10,000); and

(ix) A filing fee in the amount prescribed by § 12.25 of these rules shall be submitted with the complaint at the time of its filing.

(2) *Subscription and verification of the complaint.* Each complaint shall be signed personally by an individual complainant or by a duly authorized officer or agent of a complainant who is not a natural person. His signature shall be given under oath or affirmation under penalty of law attesting either that he knows the facts set forth in the complaint to be true, or that he believes that facts set forth to be true, in which event the information upon which he formed that belief shall be set forth with particularity.

(3) *Time and place of filing of complaint.* A complaint shall be filed by delivering a copy thereof, in proper form, to the Commission at its principal offices in Washington, D.C., addressed to the Office of Proceedings, attention of the Proceedings Clerk. The complaint may be filed in person, during normal business hours, or by certified mail, or registered mail with return receipt requested. If filing is by mail, it shall be addressed to the Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. The complaint shall not be served on any person or party named therein. Upon the filing of the complaint and the appropriate filing fee, the Proceedings Clerk shall assign a docket number to the matter and shall maintain the official docket.

(4) *Bond required if complainant is non-resident.* If a complaint in reparations is filed by a non-resident of the United States, the complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States or two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of (1) costs, including reasonable attorney's fees, for the respondent if the respondent shall prevail; and (2) any reparation award that may be issued by the Commission against the complainant on any counterclaim asserted by respondent; Provided, that the furnishing of a bond may be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

§ 12.14 Withdrawal of complaint.

At any time prior to service of notification to the complainant pursuant to § 12.15(a) of the Director of the Office of Proceedings' determination to forward the complaint to a registrant, complainant may file a written notice of withdrawal of the complaint which shall terminate the Commission's consideration of the complaint without prejudice to complainant's right to re-file a reparations complaint based upon the same set of facts within two years after the cause of action accrues. If the complainant has previously filed a notice of withdrawal of a complaint based upon the same set of facts, the notice of withdrawal of complaint shall terminate the case with prejudice to complainant's rights to re-file a complaint in reparations based on the same set of facts, but such termination shall be regarded by the Commission as without prejudice to complainant's right to seek redress in such alternative forums as may be available for adjudication of his claims.

§ 12.15 Notification of complaint.

(a) *Forwarding of complaint to registrant.* If, in the opinion of the Director of the Office of Proceedings, the facts set forth in a complaint warrant such action as to any of the registrants, a copy of the complaint, together with any attachments thereto, shall be forwarded by serving by registered mail or certified mail and such registrant named therein at an address previously designated with the Commission by the registrant for receipt of reparation complaints, as provided in Commission Regulation § 3.30 17 CFR 3.30, or, if no such designation has been filed with the Commission, at such address as will accomplish actual notice to the respondent. Should the Director determine to forward the complaint, the complainant shall be notified of this determination at the time the complaint is forwarded.

(b) *Determination not to forward complaint.* The Director may, in his discretion, refuse to forward a complaint as to a particular respondent if it appears that the matters alleged therein are not cognizable in reparations, or that grounds exist pursuant to § 12.24 (c) or (d) for refusing to forward the complaint. If the Director of the Office of Proceedings should determine not to forward the complaint to all registrants named in the complaint in accordance with this Section, no proceeding shall be held thereon and the complainant shall be notified to that effect. If the Director determines to forward the complaint as to less than all of the registrants, the complainant shall be so notified. A termination of the complaint as to any registrant shall be regarded by the Commission as without prejudice to the right of the complainant to seek such alternative forms of relief as may be available.

§ 12.16 Response to complaint.

Within 45 days after the complaint has been served by the Office of Proceedings on the registrant, or within such additional time (not to exceed fifteen days absent extraordinary circumstances) as the Director of the Office of Proceedings, or his delegee, may, for good cause shown, grant, each registrant shall either (1) satisfy the complaint in accordance with § 12.17 of these rules; or (2) answer the complaint in the manner prescribed by § 12.18 of these rules.

§ 12.17 Satisfaction of complaint.

A respondent may satisfy the complaint (a) by paying to the complainant either the amount to which the complainant claims to be entitled as set forth in the complaint or such other amount as the complainant will accept in satisfaction of his claim; and (b) by submitting to the Commission notice of satisfaction and withdrawal of the complaint, duly executed by the complainant and the respondent.

§ 12.18 Answer; Election of procedure.

An answer filed pursuant to § 12.16 of these rules shall meet the following requirements—

(a) *Content*—Each answer shall contain—

(1) The full name, current address and telephone number (during business hours) of each respondent on whose behalf the answer is filed;

(2) A complete description of each registrant's case, including but not limited to, a precise and detailed statement of the facts which constitute each registrant's ground for defense;

(3) Admissions, if any, as to the registrant's liability for the amount (or any portion thereof) claimed as damages;

(4) A statement indicating whether the registrant is (and if the answer is filed on behalf of two or more registrants, which if any of them are) in receivership or subject to bankruptcy proceedings;

(5) A statement indicating whether an arbitration or civil court litigation, based on the same set of facts set forth in the complaint (involving any or all of the parties named therein), is pending;

(6) A counterclaim which the registrant wishes to pursue under § 12.19 of these rules;

(7) An election of an alternative decisional procedure pursuant to Subparts C, D or E of these rules. (A proceeding pursuant to Subpart D may be elected only if the amount of damages claimed in the complaint or as counterclaims, exclusive of interest and costs, does not exceed $10,000. A procedure pursuant to Subpart E may be elected only if the amount of damages claimed in the complaint or as counterclaims, exclusive of interest and costs, exceeds $10,000);

(8) If appropriate, a filing fee in the amount prescribed by § 12.25 shall be submitted with an answer at the time of its filing.

(b) *Motion for reconsideration of determination to forward the complaint.* An answer may include a motion for reconsideration of the determination to forward the complaint, specifying the grounds therefor, which the Director of the Office of Proceedings, in his discretion, may grant by terminating the case pursuant to § 12.27, or deny by forwarding the pleadings and matters of record for an elected decisional proceeding pursuant to § 12.26. The inclusion in an answer of a motion for reconsideration shall not preclude a respondent, if the motion is denied, from moving for dismissal at a later stage of the proceeding for the same reasons cited in a motion for reconsideration pursuant to this paragraph.

(c) *Subscription and verification of the answer.* An answer shall be signed personally by each registrant on behalf of whom it is filed or by a duly authorized officer or agent of any such registrant who is not a natural person. Each registrant's signature shall be given under oath, or by affirmation under penalty of law, attesting that he has read the answer; that to the best of his knowledge all of the statements in the answer, the counterclaim (if any), and the materials required by these rules to be appended thereto, are accurate and true, and that the answer (and counterclaim, if any) has not been interposed for delay.

(d) *Affidavit of service.* The registrant shall file with his answer an affidavit showing that he has served a true copy of the answer upon the complainant, either personally or by first-class mail addressed to the complainant at the address set forth in the complaint.

(e) *Time and place of filing an answer.* An answer shall be filed by mailing or delivering a copy thereof, in proper form, to the Commission at its principal office in Washington, D.C., addressed to the Office of Proceedings, Attention of the Proceedings Clerk. The answer may be filed in person, during normal business hours, or by certified mail, or registered mail with return receipt requested. If filing is by mail, it shall be addressed to the Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581.

§ 12.19 Counterclaim.

A registrant may, at the time of filing an answer to a complaint, set forth as a counterclaim: (a) Facts alleging a violation and a request for a reparation award that would be a proper subject for a complaint under § 12.13 of these rules; or (b) any claim which at the time the complaint is served the registrant has against the complainant if it arises out of the transaction or occurrence or series of transactions or occurrences set forth in the complaint.

§ 12.20 Response to counterclaim; reply; election of procedure.

(a) *Response to counterclaim.* If an answer asserts a counterclaim, the complainant shall, within thirty (30) days after service upon him of the answer by the respondent: (1) Satisfy the counterclaim as if it were a complaint, in the manner prescribed by § 12.17 of these rules; or (2) file a reply to the counterclaim with the Commission.

(b) *Form and content of reply.* Should the complainant, under this paragraph, elect to file a reply to a counterclaim, the reply shall be strictly confined to the matters alleged in the counterclaim and shall conform to the form and content and other requirements set forth in Section 12.18 of these rules.

(c) *Election of decisional procedure.* If neither the complainant nor the respondent, in the complaint or answer respectively, has previously made an election of the summary decisional procedure or the formal decisional procedure, the complainant may make such an election in his reply.

§ 12.21 Voluntary dismissal.

(a) At any time after the Director of the Office of Proceedings has served notification to the parties pursuant to § 12.15 of these rules of his determination to forward the complaint to the respondent for a response, either the complainant or the respondent may obtain dismissal of the complaint (or the proceeding, if one has commenced) by filing a stipulation of dismissal, duly executed by all of the complainants and each respondent against whom the complaint has been forwarded (or added as a party in the course of a proceeding); *provided however*, that if the stipulation is filed after any respondent has filed an answer, the terms of the stipulation shall include a dismissal of any counterclaims in the answer.

(b) A dismissal of a complaint pursuant to this paragraph shall be with prejudice to complainant's right to re-file a claim in reparations based upon the same set of facts as alleged in the dismissed complaint. Unless otherwise stated in the stipulation, a dismissal ordered pursuant to this paragraph shall be regarded by the Commission as without prejudice to the parties' right to seek redress in such alternative forums as may be available for adjudication of their claims.

(c) Upon receiving a written stipulation of dismissal which satisfies the requirements of this rule, the official before whom the matter or proceeding is pending shall issue an order of dismissal, and serve a copy thereof upon each of the parties.

(d) This rule shall be applicable at all stages of a reparation proceeding.

§ 12.22 Default proceedings.

(a) *Institution of a default proceeding.* Failure timely to respond to a complaint or a counterclaim, as required by §§ 12.16 and 12.20 of these rules, or, if applicable, to pay a filing fee required by § 12.25(b) or (c), shall be treated as an admission of the allegations of the complaint or counterclaim by the non-responding party, shall constitute a waiver by such party of any decisional procedure afforded by these Rules on the facts set forth in the complaint or counterclaim, and shall result in the institution of a default proceeding.

(b) *Default procedure.* Upon a party's failure to respond timely to a complaint or counterclaim as prescribed in §§ 12.16 and 12.20 of these rules, or timely to comply with § 12.25(b) or (c), the Director of the Office of Proceedings shall forward the pleadings, and other materials then of record, to a Proceedings Officer who may thereafter enter findings and conclusions concerning the questions of violations and damages and, if warranted, enter a reparation award against the non-responding party. If the facts which are treated as admitted are considered insufficient to support a violation or the amount of reparations sought, the Proceedings Officer may order production of supplementary evidence from the party not in default and may enter a default order and an award based thereon.

(c) *Finality.* A default order issued pursuant to this rule, or pursuant to any other provisions of these Part 12 Reparation Rules, shall become the final decision and order of the Commission thirty (30) days after service thereof, unless the order is set aside pursuant to § 12.23(a) of these rules, or unless the Commission takes review of such order on its own motion on or before the thirtieth day.

§ 12.23 Setting aside of default.

(a) *Default order not final.* In order to prevent injustice or for good cause shown, and on such conditions as may be appropriate, a non-final default order (including any award therein) may be set aside by the official who issued the order.

(1) *Procedure for Setting Aside Non-Final Default Order.* Any party or person who is the subject of a default order issued pursuant to these rules may, at any time before the order becomes final pursuant to § 12.22(c), file and serve a motion to set aside the default, which shall set forth reasons why the act or omission for which the party was defaulted was not willful, why there is a reasonable likelihood of success for the party's claim or defense if heard on the merits, and why no prejudice will be sustained by other parties if the default is set aside. A motion to set aside a default order filed pursuant to this subparagraph shall be decided, in the first instance, by the official who issued the default order.

(2) *Review.* A denial of a motion to set aside a non-final default order by the official who issued the order shall be treated as an initial decision, which may be appealed to the Commission in accordance with the requirements of § 12.401 of these rules. A grant of a motion to set aside a non-final default order may be appealed only in accordance with the requirements of § 12.309 of these rules.

(b) *Default order final.* A default order that has become final pursuant to § 12.22(c) shall not be set aside except upon a motion filed and served by the defaulted party showing that he should be relieved from the default order because of fraud perpetrated on a decisionmaking official or the Commission, mistake, excusable neglect, or because the order is void for want of jurisdiction. Such a motion shall also show that, if the default order were set aside, there would be a reasonable likelihood of success for his claim or defense on the merits and that no party would be prejudiced thereby. Motions to set aside a final default order for fraud, mistake, or excusable neglect shall be filed within one year after the order was issued. All motions to set aside default orders shall be decided, in the first instance, by the official who issued the order. A denial of a motion to set aside a default order that has become final shall be treated as an initial decision, which may be appealed to the Commission in accordance with the requirements of § 12.401 of these rules. A grant of a motion to set aside a final default order shall be treated as a non-final order which may be appealed only in accordance with the requirements of Section 12.309 of these rules.

§ 12.24 Parallel proceedings.

(a) *Definition.* For purposes of this section, a parallel proceeding shall include—

(1) An arbitration proceeding or civil court proceeding, involving one or more of the respondents as a party, which is pending at the time the reparation complaint is filed and involves claims or counterclaims that are based on the same set of facts which serve as a basis for all of the claims in the reparations complaint, and which either:

(i) Was commenced at the instance of the complainant in reparations; or

(ii) Involves counterclaims by the complainant in reparations alleging violations of the Commodity Exchange Act, or any regulation or order issued thereunder; or

(iii) Is governed by a compulsory counterclaim rule of federal court procedure which required the complainant in reparations to assert all of his claims (including those based on alleged violations of the Commodity Exchange Act, and any regulation or order issued thereunder) as counterclaims in that proceeding;

(2) The appointment by a court of a receivership over the assets, property or proceeds of a respondent named in a reparation complaint where the responsibility of the receivership includes the resolution of claims made by customers; or

(3) A petition filed under any chapter of the Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as amended, commenced pursuant to 11 U.S.C. 301 or 302 by a respondent in a reparation proceeding, or the issuance by a bankruptcy court of an

order for relief after the filing against a respondent in a reparation proceeding of an involuntary petition in bankruptcy pursuant to 11 U.S.C. 303.

(b) *Notice:* At the time a complaint in reparations is filed pursuant to these rules, or at any time thereafter, any party, receiver or trustee, or counsel to any of the foregoing with knowledge of a parallel proceeding shall promptly notify the Commission, by first-class mail addressed to the Office of Proceedings, attention of the Proceedings Clerk, and serve notice on all other parties, including the receiver or trustee. The notice shall include the following information:

(1) The caption of the parallel proceeding;

(2) The name of the court or the arbitration tribunal (including address and phone number, if known);

(3) The docket number or numbers;

(4) The date the parallel proceeding was filed (and the current status if known); and

(5) If a proceeding in bankruptcy or receivership is pending, the date of the appointment and name and address of the receiver or trustee.

A copy of any relevant complaint, petition or order shall be attached to the notice.

(c) *Effect of pending arbitration or civil court litigation.* (1) The Director of the Office of Proceedings shall refuse to institute an elected decisional procedure concerning a reparation complaint filed under this Part in which there is a parallel proceeding described in paragraph (a)(1) of this section and shall return the complaint to the complaining person. The effective date of the Director's termination of the complaint without prejudice shall be fifteen (15) days from the date of service of notice of the action taken pursuant to this subparagraph.

(2) If notice of a parallel proceeding described in paragraph (a)(1) of this section is received before the initial decision is filed (or before a final decision under § 12.106 of the rules is entered), a proceeding in which a decisional procedure has been commenced shall be dismissed, without prejudice. The effective date of the order of dismissal shall be fifteen (15) days from the date of service of the order by the Proceedings Clerk.

(d) *Effect of receivership or bankruptcy proceedings.* (1) The Director of the Office of Proceedings shall refuse to institute an elected decisional procedure as to a respondent in any reparation complaint filed pursuant to this part who is the subject of a parallel proceeding described in paragraph (a)(2) or (a)(3) of this section, and shall notify all parties, including the receiver or trustee, that as to that respondent a reparation proceeding shall not be instituted. The effective date of the Director's action shall be fifteen (15) days from the date of service of the notice thereof.

(2) A proceeding in which an elected decisional procedure has been commenced shall be ordered dismissed, without prejudice, as to any respondent who becomes the subject of a parallel proceeding described in paragraph (1)(2) or (a)(3) of this section if notice pursuant to subsection (b) of this section is received before the filing of an initial decision (or before a final decision is issued pursuant to § 12.106) as to that respondent. The Proceedings Clerk shall notify all parties, including the receiver or trustee, of the order. The effective date of the order shall be fifteen (15) days from the date of the service of the order by the Proceedings Clerk.

(e) *Exceptions.* At the time notice of a parallel proceeding is filed pursuant to paragraph (b) of this section, or any time thereafter, any party, or the receiver or trustee, may file and serve upon other parties a statement in support of or in opposition to any action taken or to be taken pursuant to paragraph (c) or (d) of this section. This statement shall be addressed to the Office of Proceedings, attention of the Proceedings Clerk. Upon receipt of any such statement, the Proceedings Clerk shall immediately forward the statement to the official with responsibility over the case. The notice and the statements filed by the parties shall be reviewed by that official who, on or before the effective date of action taken pursuant to paragraphs (c)(1), (c)(2), (d)(1), and (d)(2), of this section, may take such actions as, in his opinion, are necessary to ensure that the parties to the matter or proceedings are not unduly prejudiced.

(f) *No right of appeal to the Commission.* Any action taken, or order issued, pursuant to paragraphs (c)(1), (c)(2), (d)(1), or (d)(2), of this section that has become effective shall be deemed a final order which is not subject to appeal pursuant to Subpart F of these rules.

§ 12.25 Filing fees.

(a) *Fees payable upon filing a complaint.* (1) A complainant who, in the complaint, has elected the voluntary decisional procedure shall, at the time of filing the complaint, pay a filing fee of $25.00;

(2) A complainant who, in the complaint wherein the amount of damages claimed does not exceed $10,000, exclusive of interest and costs, has not elected the voluntary decisional procedure shall, at the time of filing the complaint, pay a filing fee of $100.00.

(3) A complainant who, in the complaint wherein the amount of damages claimed exceeds $10,000, exclusive of interest and costs, has not elected the voluntary decisional procedure shall, at the time of filing the complaint, pay a filing fee of $200.00.

(b) *Fees payable upon filing an answer.* (1) If a complainant, in the complaint, has elected the voluntary decisional procedure, a respondent who, in his answer, elects the summary decisional procedure (available only where the amount of damages claimed in the complaint or as counterclaims does not exceed $10,000) shall, at the time of filing the answer, pay a filing fee of $75.00.

(2) If a complainant, in the complaint, has elected the voluntary decisional procedure, a respondent who, in his answer, elects the formal decisional procedure (available only where the amount of damages claimed in the complaint or as counterclaims exceeds $10,000) shall, at the time of filing the answer, pay a filing fee of $175.00.

(c) *Fees payable upon filing a reply.* In any case in which a counterclaim has been made, unless a complainant in the complaint, or the respondent in an answer, has elected the decisional procedure a complainant, who in his reply elects either of these procedures, shall, at the time of filing the reply, pay a filing fee of $75.00 or $175.00, respectively, depending whether the procedure elected by complainant is pursuant to Subparts D or E.

§ 12.26 Commencement of a reparation proceeding.

(a) *Commencement of voluntary decisional proceeding.* Where complainant and respondent in the complaint and answer have elected the voluntary decisional procedure pursuant to Subpart C of these Rules and the complainant has paid the filing fee required by § 12.25 of these rules, the Director of the Office of Proceedings shall, if in his opinion the facts warrant taking such action, forward the pleadings and all materials of record to the Proceedings Clerk for a proceeding to be conducted in accordance with Subpart C of these rules. The Proceedings Clerk shall forthwith notify the parties of such action. Such notification shall be accompanied by an order issued by the Proceedings Clerk requiring the parties to complete all discovery, as provided in Subpart B of these Rules, within 60 days thereafter. A voluntary decisional proceeding

commences upon service of such notification and order. As soon as practicable after service of such notification, the Proceedings Clerk shall assign the case to a Judgement Officer for a final decision.

(b) *Commencement of summary decisional proceeding.* Where the amount claimed as damages, exclusive of interest and costs, in the complaint or in counterclaim does not exceed $10,000, and either a complainant or a respondent in the complaint, answer, or reply, has elected the summary decisional procedure pursuant to Subpart D of these rules, and has paid the filing fee required by § 12.25, the Director of the Office of Proceedings shall, if in his opinion the facts warrant taking such action, forward the pleadings and all materials of record to the Proceedings Clerk for a proceeding to be conducted in accordance with Subpart D of these rules. The Proceedings Clerk shall forthwith notify the parties of such action. Such notification shall be accompanied by an order issued by the Proceedings Clerk requiring the parties to complete all discovery, as provided in Subpart B of these rules, within 60 days thereafter. A summary decisional proceeding commences upon service of such notification. As soon as practicable after service of such notification, the Proceedings Clerk shall assign the case to a Judgement Officer for disposition.

(c) *Commencement of formal decisional proceeding.* Where the amount claimed as damages in the complaint or as counterclaims exceeds $10,000, exclusive of interest and costs, and either a complainant or a respondent in the complaint, answer or reply, has elected the formal decisional procedure pursuant to Subpart E of these rules, and has paid the filing fee required by § 12.25, the Director of the Office of Proceedings shall, if in his opinion the facts warrant taking such action, forward the pleadings and the materials of record to the Proceedings Clerk for a proceeding to be conducted in accordance with Subpart E of these rules. The Proceedings Clerk shall forthwith notify the parties of such action. Such notification shall be accompanied by an order issued by the Proceedings Clerk requiring the parties to complete all discovery, as provided in Subpart B, within 60 days thereafter. A formal decisional proceeding commences upon service of such notification and order. As soon as practicable after service of such notification, the Proceedings Clerk shall forward the pleadings and materials of record to a Proceedings Officer for discovery purposes, and assign the case to an Administrative Law Judge for disposition.

§ 12.27 Termination of consideration of pleadings.

If the Director of the Office of Proceedings should determine not to proceed in a manner set forth in §§ 12.26 (a), (b), or (c), consideration of the complaint and the answer (and reply, if any) shall terminate, and no proceeding shall be held on the allegations in any such pleadings. Such termination shall be regarded by the Commission as without prejudice to the right of the parties to seek such alternative forms of relief as may be available to them. If the consideration of the pleadings should be terminated, the Proceedings Clerk shall immediately notify the parties to that effect by registered or certified mail. A determination by the Director not to proceed in the manner set forth in §§ 12.26 (a), (b), or (c) of these rules is not subject to appeal pursuant to Subpart F of these rules.

Subpart B—Discovery

§ 12.30 Methods of discovery.

(a) *In general.* Parties may obtain discovery by the following methods in accordance with the procedures and limitations set forth in the section indicated—

(1) Production of documents or other items (§ 12.31);

(2) Deposition on written interrogatories (§ 12.32);

(3) Admissions (§ 12.33).

(b) *Scope of discovery.* The scope of discovery is as follows—

(1) *Relevancy.* Except as provided below, discovery may be obtained regarding any matter not privileged, which is relevant to the subject matter in the pending proceeding, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible items, and the identity and location of persons having knowledge of any discoverable matters. Tax returns and personal bank account records shall not be discoverable, except upon motion by the party seeking discovery showing the need for disclosure of information contained therein, and that the same information could not be obtained through other means.

(2) *Protective orders.* Upon motion by a party or the person from whom discovery is sought, filed within twenty days after the objectionable discovery notice or request is served, and for good cause shown, the official presiding over discovery may issue any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding, or the inappropriate disclosure of trade secrets or sensitive commercial or financial information. Relief through a protective order may include one or more of the following—

(i) That discovery not be had;

(ii) That discovery may be had only on specified terms and conditions;

(iii) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(iv) That a trade secret or other confidential commercial information not be disclosed or be disclosed only in a designated way; and

(v) That the parties simultaniously file specified documents or information in sealed envelopes to be opend only as directed by the decisionmaking official.

(3) *Motions for order compelling discovery.* It shall be the duty of a party to obtain an order compelling discovery from another party if the latter party fails to comply with a discovery notice, by filing a motion therefor within twenty days after the time allowed by these rules for compliance with the notice has expired.

(c) *Sanctions for abuse of discovery.* If an Administrative Law Judge or a Judgement Officer finds that any party, without substanial justification, has necessitated the filing of a motion for a protective order or for an order compelling discovery, or any other discovery-related motions, that party shall, if the motion is granted, be ordered to pay, at the termination of the proceeding, the reasonable expenses of the moving party incurred in filing the motion, unless the decisionmaking official finds that circumstances exist which would make an award of such expenses unjust. If a decisionmaking official finds that any party, without substantial justification, has filed a motion for a protective order or for an order compelling discovery, or any discovery-related motions, that party shall, if the motion is denied, be ordered to pay, at the termination of the proceeding, the reasonable expenses of an adverse party incurred in opposing the motion, unless the decisionmaker finds that circumstances exist which would make an award of such expenses unjust.

(d) *Time limit.* Absent an extension of time, all discovery notices or requests shall be served within forty (40) days (and all discovery shall be completed within sixty (60) days) after the notification and the order required by § 12.26 (a), (b), or (c) has been served on

the parties. Upon motion by a party and for good cause shown, the time allowed for discovery may be enlarged for one additional period not to exceed thirty (30) days. Motions for any additional periods of extension of time to conduct discovery shall be decided by the Chief Administrative Law Judge, or such Administrative Law Judge as he may designate, and may be granted only upon a showing of extraordinary circumstances.

§ 12.31 Production of documents and tangible items.

(a) *By a party.* Any party, within the time prescribed in § 12.30(d) and subject to the limitations in § 12.30(a), may serve on any other party, a notice to produce copies of specifically designated categories of documents, papers, books, accounts, letters, photographs, objects, or tangible things which are in the party's possession, custody or control. A copy of the notice shall be served on all other parties to the proceeding. All documents requested in the notice to produce shall be served on the party seeking the discovery within twenty (20) days after service of the notice to produce.

(b) *By a non-party.* Any party may, by filing an appropriate motion showing the need for the materials and an application for a subpoena in accordance with the procedure precribed in § 12.313 and within the time prescribed by § 12.30(d) of these rules, seek leave to serve upon a non-party a notice to produce copies of any specifically designated categories of materials as are described in paragraph (a) of this section. After an appropriate order and subpoena has been issued, such party may serve upon a non-party a notice to produce such materials. All materials requested in the notice to produce, and, if applicable, a detailed explanation of why any of the specified materials cannot be produced, shall be served on the party seeking discovery within such time (not to exceed thirty (30) days) as the subpoena shall specify. Enforcement of the order and subpoena may be sought in accordance with § 12.313.

§ 12.32 Depositions on written interrogatories.

(a) *Notice.* Any party, within the time prescribed by § 12.30(d), may serve on any other party or any officer or agent of a party a notice of the taking of a deposition on written interrogatories.

(b) *Number.* The number of written interrogatories served upon any one party shall not exceed thirty. For the purpose of this rule, each sub-interrogatory or divisible part of an interrogatory shall be regarded as one interrogatory. Leave to serve additional interrogatories shall not be granted absent extraordinary circumstances.

(c) *Reply.* (1) Each interrogatory served shall be answered by the party served or if the party is a corporation, partnership, association, or government agency, by any officer or agent thereof selected by the responding party.

(2) Each interrogatory shall be answered separately and fully in writing, unless objected to, in which event the reasons for objection shall be stated in lieu of an answer. For the purposes of this rule, an evasive or incomplete answer shall be treated as a failure to answer. The answers are to be signed and verified by the person making them. The person upon whom a notice to take a deposition on written interrogatories has been served shall serve a copy of the answers and objections within twenty (20) days after service of the interrogatories.

(d) *Deposition of a non-party.* The deposition on written interrogatories of a non-party may be taken only within the time prescribed by § 12.30(d), and only pursuant to an order entered and subpoena issued in accordance with the provisions of § 12.313 of these rules; provided however, that the deposition on written interrogatories of a Commission member or employee may only be taken upon a showing that the Commission member or employee has personal knowledge of the matters sought to be discovered (*i.e.*, not obtained pursuant to a Commission investigation), that the information sought to be discovered is material and that the information sought to be discovered is not available from other sources.

(e) *Filing of depositions on written interrogatories in a voluntary or summary decisional proceeding.* In proceedings commenced pursuant to Sections 12.26 (a) and (b) of these rules, copies of all depositions on written interrogatories shall be filed by the party on whose behalf the discovery was obtained.

§ 12.33 Admissions.

(a) *Request for admissions.* Any party may, within the time permitted by § 12.30(d) of these rules, serve upon any other party a written request for admissions of the truth of any matters set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and coping. A copy of the request shall be filed with the Proceedings Clerk.

(b) *Reply.* Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless within twenty (20) days after service of the request, the party upon whom the request is directed files and serves upon the party requesting the admission a verified written answer or objection to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission and when good faith requires that a party qualify his answer and deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give a lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or reasonably available to him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may deny the matter or set forth reasons why he cannot admit or deny it.

(c) *Determining sufficiency of answers or objections.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains his burden of showing that the objection is justified, the official presiding over discovery shall order that an answer be served. If such official determines that an answer does not comply with the requirements of this rule, he may order either that the matter is admitted or that an amended answer be served.

(d) *Effect of admission.* Any matter admitted under this rule is conclusively established and may be used as proof against the party who made the admission. However, the discovery or decisionmaking official may permit withdrawal or amendment when the presentation of the merits of the proceeding will be served thereby and the party who obtains the admission fails to satisfy such official that withdrawal or amendments will prejudice him in maintaining his action or defense on the merits.

§ 12.34 Discovery by a decisionmaking official.

(a) *Applicability.* The provisions of this rule apply only to summary decisional proceedings and formal decisional proceedings commenced pursuant to § 12.26 (b) and (c). This rule does not apply to a voluntary decisional proceeding commenced pursuant to § 12.26(a). For the purposes of this rule, the term "decisionmaking official" shall mean a Judgment Officer or Administrative Law Judge assigned to render a decision in the proceeding.

(b) *Production of documents and tangible things.*—(1) *Order for production.* A decisionmaking official may, upon his own motion, order a party or non-party to produce copies of specifically designated documents, papers, books, accounts, or tangible things (or categories of any of the foregoing) which are in the possession, custody or control of the party, non-party or agent thereof, against whom the order is directed. Except as provided in paragraph (b)(2) of this section, a party or non-party ordered to produce documents or any of the above items under this rule shall file and serve the documents and items listed in the order within twenty (20) days from the date of service of the order, or within such period of time as the decisionmaking official may direct. The decisionmaking official may issue subpoenas to compel the production by parties or non-parties of such documents and tangible things as are described in this section.

(2) *Trade secrets, commercially sensitive or confidential information.* If any party or person against whom an order to produce has been directed acting in good faith has reason to believe that any documents or other tangible thing ordered to be produced contains a trade secret, or commercially sensitive or other confidential information, the party or person may, in lieu of serving any such document, in accordance with paragraph (b)(1) of this section, file and serve a written request for confidential treatment of such documents. Any such request for confidential treatment shall be accompanied by a verified statement identifying with particularity the information on those documents considered to be trade secrets, commercially sensitive or confidential information, with reasons therefor, and indicating which portions, if any, of those documents may be served on other parties without disclosure of such information. Upon considering a request for confidential treatment in accordance with this subsection, the decisionmaking official may, if he finds that the information identified in the request warrants confidential treatment and is not probative of any material fact in controversy, make copies of the documents produced, delete such information from the copies, and serve the copies as modified upon the other parties, with or without an appropriate protective order limiting dissemination to the parties and their counsel, if any.

(3) *Inability to produce.* Any party or person who cannot produce documents or other tangible things called for in an order for production, because those documents or things are not in his possession, custody or control, shall file and serve within the time provided in paragraph (b)(1) of this section a verified statement identifying the documents which cannot be produced and setting forth with particularity the reasons for non-production.

(c) *Order for written testimony.* The decisionmaking official may, upon his own motion, order a party or non-party witness to submit verified statements or written responses to interrogatories, or both, as to all relevant matters within the party's personal knowledge which are required in response to the order. A party or person ordered to file affidavits and/or verified written responses to interrogatories shall file and serve the documents within such period of time as the decisionmaking official may direct. The official may issue subpoenas to compel the filing by parties or non-parties of such verified statements and written responses as are described in this subsection.

§ 12.35 Consequences of a party's failure to comply with a discovery order.

If a party fails to comply with an order compelling discovery, or an order issued pursuant to § 12.34, the official assigned to render the decision in the case may, upon motion by a party or on his own motion, take such action in regard thereto as is just, including but not limited to the following—

(a) Infer that the documents or things not produced would have been adverse to the party;

(b) Rule that for the purposes of the proceeding the information in or contents of the documents or things not produced be taken as established adversely to the party;

(c) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld documents or other evidence would have shown;

(d) Rule that a pleading, or part of a pleading, or a motion or other submission by the party, to which the order for production related, be stricken;

(e) Dismiss the entire proceeding with prejudice to matters alleged in the complaint, but without prejudice to counterclaims; and

(f) Issue a default order and render a decision against the party, whose rights shall thereafter be determined by §§ 12.22 and 12.23 of these rules.

§ 12.36 Subpoenas to compel discovery.

An application for a subpoena requiring a party or non-party to comply with a discovery order issued pursuant to §§ 12.31 and 12.32, may be made, in writing, by any party without notice to other parties, and may be filed simultaneously with the motion for the discovery order. The standards for issuance or denial of such an application, the service requirement, and the method for enforcing such subpoenas shall be determined by the provisions of § 12.313 of these rules.

Subpart C—Rules Applicable to Voluntary Decisional Proceedings

§ 12.100 Scope and applicability of rules.

(a) *In general.* The rules set forth in this subpart are applicable only to proceedings forwarded pursuant to § 12.26(a) of the Reparation Rules. The rules of Subpart B permitting discovery are applicable in a voluntary decisional proceeding. Unless specifically made applicable, the rules prescribed in Subparts D, E, and F shall not apply in a voluntary decisional proceeding.

(b) *Waiver by electing the voluntary decisional procedure.* By electing the voluntary decisional procedure, parties waive the opportunity for an oral hearing and whatever rights they may have otherwise had: to receive a written statement of the findings of fact upon which the final decision is based; to prejudgment interest in connection with a reparation award; to appeal to the Commission the final decision; and to appeal the final decision to a United States Court of Appeals pursuant to Section 14(e) of the Commodity Exchange Act, 7 U.S.C. 18(e).

§ 12.101 Functions and responsibilities of the judgment officer.

The Judgment Officer shall be responsible for the fair and orderly conduct of the proceeding and shall have the authority—

(a) To rule upon discovery-related motions, and to issue orders pertaining to discovery;

(b) To take such action pursuant to § 12.35 as is appropriate if a party fails to comply with a discovery order or notice;

(c) To issue subpoenas pursuant to § 12.36 of these rules;

(d) To issue orders of default for good cause shown against any party who fails to participate in the proceeding, or to comply with any provisions of these rules;

(e) To receive submissions of proof;

(f) Make the final decision in accordance with § 12.106 of these rules; and

(g) Issue such orders as are necessary and appropriate to effectuate the orderly conduct of the proceeding.

§ 12.102 Disqualification of judgment officer.

(a) *At his own request.* A Judgment Officer may withdraw from a voluntary decisional proceeding when he considers himself to be disqualified on the grounds of personal bias, conflict of interest, or similar bases. In such event he shall immediately notify the Commission and each of the parties of his withdrawal and of his basis for such action.

(b) *Upon the request of a party.* Any party may request a Judgment Officer to disqualify himself on the grounds of personal bias, conflict of interest, or similar bases. Interlocutory review of an adverse ruling by the Judgment Officer may be sought without certification of the matter by the Judgment Officer only in accordance with the procedures set forth in § 12.309 of the Reparation Rules.

§ 12.103 Filing of documents; subscription; service.

Except as otherwise specifically provided in these rules, all documents filed in a voluntary decisional proceeding, including (but not limited to) amended or supplemental pleadings, motions, discovery requests and responses thereto, and submissions of proof, shall meet the requirements of §§ 12.11 and 12.12 of the Reparation Rules as to form, and shall be filed and served in accordance with § 12.10 of the Reparation Rules.

§ 12.104 Amendments to pleadings; motions.

(a) *Amendments and supplemental pleadings.* At any time prior to the issuance of the final decision, the parties may, by unanimous express written consent, amend or supplement the pleadings. Supplemental pleadings may set forth transactions or occurrences or events which have happened since the date of the pleadings to be amended or supplemented, and which are relevant to any of the issues involved.

(b) *Motions.* Except as specifically permitted by rule in this Subpart, motions, other than discovery-related motions and motions relating to procedural orders, shall be prohibited. Motions for procedural orders, including motions for extension of time, may be acted upon at any time.

§ 12.105 Submission of proof only in documentary or tangible form.

Proof in support of the complaint and in support of the respondent's answer (including counterclaims, if any), and any reply thereto, may be found in those verified documents, in verified statements of non-party witnesses, in other verified statements of fact, and in other documents and tangible evidence. No oral testimony by, or examination of, the parties or their witnesses shall be permitted.

§ 12.106 Final decision and order.

(a) *When a final decision is required.* After all submissions of proof have been received, the Judgment Officer shall make the final decision. Upon its issuance, the final decision shall forthwith be filed with the Proceedings Clerk, and immediately served on the parties. The Proceedings Clerk shall also serve a notice, to accompany the final decision, of the effect of a failure by a party ordered to pay a reparation award to file the documents required by § 12.407(c) of these rules.

(b) *Content of final decision.* The final decision shall contain—

(1) A briefly stated conclusion, not accompanied by findings of fact, as to whether the respondent violated any provision of the Act, Commission's regulations or orders, resulting in damages to the complainant; and

(2) If one or more counterclaims have been permitted in the proceeding, a brief conclusion, not accompanied by findings of fact, as to whether the complainant is liable to the respondent for such counterclaims; and

(3) A determination of the amount of damages, if any, sustained by complainant or respondent in connection with reparation claims or counterclaims, and an order against a party found liable for damages directing that party to pay an award. An award in favor of the complainant shall not exceed the amount of damages in the complaint (including any amendment thereto), and an award in favor of a respondent shall not exceed the amount of damages claimed in a counterclaim (including any amendment thereto). A conclusion made pursuant to paragraph (b)(1) of this section shall not be deemed a finding of the Commission for the purposes of Section 8a of the Commodity Exchange Act.

(c) *No assessment of prejudgment interest or costs.* A party found liable for damages in a voluntary decisional proceeding shall not be assessed prejudgment interest, attorney's fees, or costs (other than costs assessed as a sanction for abuse of discovery).

(d) *Effect of final decision and order: No appeal.* A party may not appeal to the Commission a final decision issued pursuant to Subpart C of these rules. In accordance with the election and waivers described in Section 12.100(b), a final decision may not be appealed to a United States Court of Appeals pursuant to Section 14(e) of the Commodity Exchange Act, but a final decision shall be recognized as a final order of the Commission for all other purposes including the judicial enforcement of an award made in connection with the final decision pursuant to Section 14(d) of the Commodity Exchange Act.

(e) *Effective date of final decision.* A final decision and order shall become effective thirty (30) days after service, unless the Commission pursuant to Section 12.403 takes review of the decision on its own motion on or before the thirtieth day. Any reparation award ordered in a final decision pursuant to this rule shall be satisfied in full within forty-five (45) days after service thereof, unless the Commission pursuant to § 12.403(b) stays the duty of satisfaction. Any party who fails timely to satisfy such an award is subject to the automatic suspension provisions of § 12.407(c).

Subpart D—Rules Applicable to Summary Decisional Proceedings

§ 12.200 Scope and applicability of rules.

The rules set forth in this subpart are applicable only to proceedings forwarded pursuant to § 12.26(b) of the Reparation Rules. The rules in Subpart B permitting discovery are applicable in a summary decisional proceeding. Unless specifically made applicable, the rules prescribed in Subparts C and E shall not apply to such proceedings. Parties to a proceeding forwarded pursuant to § 12.26(b) may, by signed agreement filed at any time prior to the issuance of the initial decision, or of any other order disposing of all issues in the proceeding, elect to have all of the issues in the proceeding decided pursuant to the voluntary decisional procedure. Upon receiving a timely filed stipulation signed by all parties evidencing such an election, the Judgment Officer shall conduct the proceeding and render a decision pursuant to Subpart C of these rules.

§ 12.201 Functions and responsibilities of the Judgment Officer.

The Judgment Officer shall be responsible for the fair and orderly

conduct of the proceeding and shall have the authority—

(a) In his discretion, to conduct pre-decision conferences in accordance with § 12.206 of these rules;

(b) To rule upon all discovery-related motions, and to take such action pursuant to § 12.35 as is appropriate if a party fails to comply with a discovery order or request;

(c) To issue orders for the production of documents and tangible things and orders for written testimony, as provided in § 12.34 of these rules;

(d) To take such action as is appropriate under § 12.35 of these rules, if a party fails to comply with an order issued by the Judgment Officer pursuant to § 12.34;

(e) To rule on all motions permitted pursuant to § 12.205;

(f) To issue default orders for good cause against parties who fail to participate in the proceeding or to comply with these rules;

(g) To receive submissions of proof (which includes the authority to regulate the sequence of the submissions and to permit oral testimony and examination by the parties in accordance with § 12.209 of these rules);

(h) To issue subpoenas in accordance with the provisions of §§ 12.34, 12.36 and 12.209 of these rules;

(i) To make the initial decision in accordance with § 12.210 of these rules; and

(j) To issue such orders as are necessary and appropriate to effectuate the orderly conduct of the proceeding.

§ 12.202 Disqualification of Judgment Officer.

(a) *At his own request.* A Judgment Officer may withdraw from a summary decisional proceeding when he considers himself to be disqualified on the grounds of personal bias, conflict of interest, or similar bases. In such event, he shall immediately notify the Commission and each of the parties of his withdrawal and of his basis for such action.

(b) *Upon the request of a party.* Any party may request a Judgment Officer to disqualify himself on the grounds of personal bias, conflict of interest, or similar bases. Interlocutory review of an order denying such a request may be sought without certification of the matter by the Judgment Officer only in accordance with the procedures set forth in § 12.309 of the Reparation Rules.

§ 12.203 Filing of documents; subscription; service.

Except as otherwise specifically provided in these rules, all documents filed in a summary decisional proceeding, including (but not limited to) amended or supplemental pleadings, motions, discovery notices and responses thereto, documents produced or filed pursuant to § 12.34 of these rules, and submissions of proof, shall meet the requirements of §§ 12.11 and 12.12 of these rules as to form, and shall be filed and served in accordance with § 12.10 of the Reparation Rules.

§ 12.204 Amended and supplemental pleadings.

(a) *Amendments to pleadings.* At any time before the parties have concluded their submission of proof, the Judgment Officer may allow amendments of the pleadings either upon written consent of the parties, or for good cause shown, provided however, that any pleading as amended shall not contain an allegation of damages in excess of $10,000. Any party may file a response to a motion to amend the pleadings within ten (10) days after the date of service upon him of the motion;

(b) *Supplemental pleadings.* At any time before the parties have concluded their submissions of proof, and upon such terms as are just, the Judgment Officer may, upon motion by a party, permit a party to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleadings sought to be supplemented and which are relevant to any of the issues in the proceeding: Provided however, that any pleading as supplemented may not contain an allegation of damages in excess of $10,000. Any party may file a response to a motion to supplement the pleadings within ten (10) days after the date of service upon him of the motion.

(c) *Pleadings to conform to the evidence.* When issues not raised by the pleadings but reasonably within the scope of a summary decisional proceeding are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

§ 12.205 Motions.

(a) *In general.* Motions for relief not otherwise specifically provided for in Subpart D of these rules, other than discovery-related motions and motions for extensions of time and similar procedural orders, shall not be allowed. Except as otherwise specifically provided in these rules, all motions permitted under these rules shall be directed to the Judgment Officer prior to the filing of the initial decision, and to the Commission after the initial decision has been filed. Motions for extensions of time and similar procedural orders may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten (10) days after service of the motion upon him, or within such longer or shorter period as is established by these rules, or as the Judgment Officer or the Commission may direct.

(c) *Dismissal.*—(1) *By the Judgment Officer.* A Judgment Officer, acting upon his own motion, may

(i) Dismiss the entire proceeding without prejudice to counterclaims, if he finds that the matters alleged in the complaint fail to state a claim cognizable in reparations; or

(ii) Order dismissal of any claim, counterclaim, or party from the proceeding if he finds, after review of the record, that such claim or counterclaim (by itself or as applied to any party) is not cognizable in reparations.

(2) *Motion for dismissal by a party.* Any party who believes that grounds exist for dismissal of the entire complaint, or of any claim therein, or of any counterclaim or party from the proceeding, may file a motion for dismissal specifying the claims or parties to be dismissed and the reasons therefor. Upon consideration of the whole record, the Judgment Officer may grant or deny such motion, in whole or in part.

(3) *Content and effect of order of dismissal.* Any order of dismissal entered pursuant to this rule shall contain a brief statement of the findings and conclusions which serve as the basis for the order. An order of dismissal of the entire proceeding pursuant to this rule shall have the effect of an initial decision (see § 12.213(d)), and may be appealed to the Commission in accordance with the requirements of § 12.401 of these rules.

§ 12.206 Pre-decision conferences.

At any time after a summary decisional proceeding has been commenced pursuant to § 12.26(b), the Judgment Officer may, in his discretion, conduct one or more pre-decision conferences to be held in Washington, D.C. or by telephone, with all parties, for the purposes of—

(a) Discussing the advisability of electing the voluntary decisional procedure;

(b) Encouraging settlement of the entire case, or any part thereof, (such discussions may be *ex parte* with the consent of all parties);

(c) Simplifying or clarifying issues;

(d) Obtaining stipulations, admissions of fact and of authenticity of documents;

(e) Discussing amendments or supplements to the pleadings;

(f) Encouraging an early settlement of disputes relating to discovery; and

(g) Discussing any matters of relevance in the proceeding.

At or following the conclusion of such a conference, the Judgment Officer may serve a pre-decision memorandum and order setting forth the agreements, if any, reached by the parties, any procedural determinations made by him, and the issues for resolution not disposed of by the admissions or agreements by the parties. Such order, when issued, shall control the subsequent course of the proceeding unless modified to prevent injustice.

§ 12.207 Summary disposition.

(a) *Filing of motions, answers.* Any party who believes that there is no genuine issue of material fact to be determined and that he is entitled to a decision as a matter of law concerning all issues of liability in the proceeding may file a motion for summary disposition at any time until the parties have concluded their submissions of proof. Any adverse party, within ten (10) days after service of the motion, may file and serve opposing papers or may countermove for summary disposition.

(b) *Supporting papers.* A motion for summary disposition shall include a statement of the material facts as to which the moving party contends there is no genuine issue, supported by the pleadings, and by affidavits, other verified statements, admissions, stipulations, and interrogatories. The motion may also be supported by briefs containing points and authorities in support of the contention of the party making the motion. When a motion is made and supported as provided in this section, unless otherwise ordered by the Judgment Officer, an adverse party may not rest upon the mere allegations, but shall serve and file in response a statement setting forth those material facts as to which he contends a genuine issue exists, supported by affidavits and other verified material. He may also submit a brief of points and authorities.

(c) *Summary disposition upon motion of the Judgment Officer.* If the Judgment Officer believes that there may be no genuine issue of material fact to be determined and that one of the parties may be entitled to a decision as a matter of law, he may direct the parties to submit papers in support of and in opposition to summary disposition, substantially as provided in paragraphs (a) and (b) of this section.

(d) *Ruling on summary disposition.* The Judgment Officer may grant summary disposition if the undisputed pleaded facts, affidavits, other verified statements, admissions, stipulations, and matters of official notice show that (1) there is no genuine issue as to any material fact; (2) there is no necessity that further facts be developed in the record; and (3) a party is entitled to a decision in his favor as a matter of law.

(e) *Review of ruling; appeal.* An application for interlocutory review of an order denying a motion for summary disposition shall not be allowed. An order granting summary disposition as to all of the issues and all of the parties in the proceeding shall have the same effect as an initial decision (see § 12.210(d)), and may be appealed to the Commission, in accordance with § 12.401 of these rules.

§ 12.208 Submissions of proof.

(a) *Documentary evidence.* Each party may file and serve verified statements of fact and affidavits of non-party witnesses with personal knowledge of the facts which they aver to be true. Proof in support of the complaint and in support of the respondent's answer may be found in those verified documents, in affidavits of non-party witnesses, in other verified statements of fact, and in other documents and tangible exhibits.

(b) *Oral testimony and examination.* Upon motion by a party, and where it is shown to be necessary or appropriate to resolve factual issues which are central to the proceeding, the Judgment Officer may, in his discretion, permit the parties to testify orally and to conduct examination of parties and their witnesses in Washington, D.C. or by telephonic hearing. Such testimony and examination shall be conducted in accordance with § 12.209 of these rules. If the Judgment Officer determines to permit oral testimony and examination by the parties, notification thereof shall immediately be served on the parties by the Proceedings Clerk. Absent extraordinary circumstances, such oral testimony and examination shall be completed within sixty days after such notification.

§ 12.209 Oral testimony.

(a) *Oral hearing in Washington, D.C.* Where a Judgment Officer, pursuant to § 12.208(b), has determined to permit oral testimony by the parties and their witnesses, and at least one complainant and one respondent execute an agreement in writing to appear at a hearing to be held in Washington, D.C., which has been filed, the parties may present such oral testimony in that location, in the presence of the Judgment Officer. Any party who does not agree to appear at an oral hearing in Washington, D.C., will be deemed to have elected to testify and conduct examination orally by telephone in accordance with the procedure prescribed in paragraph (b) of this section. In the event of an oral hearing in Washington, D.C., the hearing shall be transcribed in the manner prescribed in § 12.313(f) of these rules. The testimony of non-parties may be adduced by their appearance at the hearing in Washington, D.C., or by telephone. Oral examination and testimony may be limited to such issues as the Judgment Officer may direct. Subject to the provisions of § 12.208(b), the date and time for an oral hearing in Washington, D.C. shall be subject to approval by the Judgment Officer who, by appropriate order, shall notify the parties of the date, place and time of the hearing. If any party, after executing a written agreement to do so, fails to appear at such a hearing, he shall be deemed to have waived the opportunity to testify orally, and to conduct oral examination of other parties and witnesses. For just cause, the Judgment Officer may take such action as is appropriate pursuant to § 12.35 against such a party for his failure to appear. In such an event, any party who does appear may present his evidence orally in the presence of the Judgment Officer.

(b) *Telephonic hearings.*—(1) *In general.* Where a Judgment Officer pursuant to § 12.208(b) has determined to permit oral examination of parties and their witnesses, and any party elects to participate by telephone, the Judgment Officer shall, by appropriate order, notify all parties of the date and time of the telephonic hearing and indicate that each party will be telephoned at the number provided in their pleadings, unless a party, prior to such hearing, files and serves notice that a different telephone number is appropriate. The Judgment Officer, in his discretion, may regulate the course and sequences of oral testimony and examination of the parties, which shall include the authority to restrict examination by a party's counsel, as the Judgment Officer deems appropriate. All telephonic discussion during a hearing shall be recorded electronically, and shall be transcribed in the event of Commission review, or judicial review pursuant to Section 14(e) of the Act.

(2) *Effect of a party's failure to participate in a telephonic hearing.* If any party who has elected to participate orally by telephone fails to participate in the telephonic hearing on the scheduled date and at the specified time, he shall

be deemed to have waived the opportunity to testify orally and to conduct oral examination of other parties and witnesses. For just cause, the Judgment Officer may take such action as is appropriate pursuant to § 12.35 against any such party who fails to participate. In the event that a party who has elected to participate by telephone is in telephonic contact with the Judgment Officer at the scheduled time, and no party for the opposing side is available for participation, the party who is in contact may present his evidence orally.

(c) *Compulsory process for the participation of parties and non-parties.* An application for a subpoena requiring a party or non-party to appear at an oral hearing in Washington, D.C., pursuant to paragraph (b)(1) of this section, or to participate by telephone pursuant to paragraphs (b)(1) and (b)(2) of this section, may be made, in writing, by any party to the Judgment Officer, without notice to other parties. The standards for issuance or denial of an application for a subpoena pursuant to this Section, the service and travel fee requirements, and the method for enforcing such subpoenas shall be determined by the provisions of § 12.313 of these rules.

§ 12.210 Initial decision.

(a) *In general.* Proposed findings of fact and conclusions of law briefs shall not be allowed. As soon as practicable after all submissions of proof have been received, the Judgment Officer shall make the initial decision, which he shall forthwith file with the Proceedings Clerk. Upon filing of an initial decision, the Proceedings Clerk shall immediately serve upon the parties a copy of the initial decision and a notification of the effect of a party's failure timely to appeal the initial decision to the Commission, as provided in paragraphs (d) and (e) of this section, as well as the effect of a failure by a party who has been ordered to pay reparation award timely to file the documents required by § 12.407(c).

(b) *Content of initial decision.* In the initial decision in a summary decisional proceeding, the Judgment Officer shall—

(1) Include a brief statement of his findings as to the facts, with references to those portions of the record which support his findings;

(2) Make a determination whether or not the respondent has violated any provision of the Commodity Exchange Act, or rule, regulation or order thereunder;

(3) Make a determination whether the complainant is liable to any respondent who has made a counterclaim in the proceeding;

(4) Determine the amount of damages, if any, that the complainant has sustained as a result of respondent's violations, which shall not exceed $10,000, exclusive of interest and costs; and the amount, if any, for which complainant is liable to respondents based on counterclaims, which, in aggregate, shall not exceed $10,000, exclusive of interest and costs; and

(5) Include an order directing either the respondent or the complainant, depending upon whose liability is greater, to pay an amount based on the difference in the amounts determined pursuant to paragraph (b)(4) of this section, on or before a date fixed in the order.

(c) *Costs; prejudgment interest.* The Judgment Officer may, in the initial decision, award costs (including the costs of instituting the proceeding, and if appropriate, reasonable attorneys' fees) and, if warranted as a matter of law under the circumstances of the particular case, prejudgment interest to the party in whose favor a judgment is entered.

(d) *Effect of initial decision.* The initial decision shall become the final decision and order of the Commission thirty (30) days after service thereof, except—

(1) The initial decision shall not become the final decision as to a party who shall have timely filed and perfected an appeal thereof to the Commission in accordance with § 12.401 of these rules; and

(2) The initial decision shall not become final as to any party to the proceeding if, within thirty (30) days after service of the initial decision, the Commission itself shall have placed the case on its own docket for review or stayed the effective date of the initial decision.

(e) *Effect of failure to file and perfect an appeal to the Commission.* Unless the Commission takes review on its own motion, the timely filing and perfection of an appeal to the Commission of the initial decision is mandatory as a prerequisite to appellate judicial review of a final decision and order entered pursuant to these rules.

Subpart E—Rules Applicable to Formal Decisional Proceedings

§ 12.300 Scope and applicability of rules.

The rules set forth in this Subpart are applicable to proceedings forwarded pursuant to § 12.26(c) of the Reparation Rules. The rules in Subpart B permitting discovery are applicable in a formal decisional proceeding, as supplemented by § 12.301. Unless specifically made applicable, the rules prescribed in Subparts C and D shall not apply to formal decisional proceedings. Parties to a proceeding forwarded pursuant to § 12.26(c) may, by written agreement filed at any time prior to the issuance of an initial decision, or of any other order disposing of all issues in the proceeding, elect to have all issues in the proceeding decided pursuant to the voluntary decisional procedure. Upon receiving a timely filed stipulation signed by all parties evidencing such an election, the Administrative Law Judge shall conduct the proceeding and render a decision pursuant to Subpart C of these rules.

§ 12.301 Functions and responsibilities of the proceedings officer.

It shall be the responsibility of the Proceedings Officer to assist parties to a formal decisional proceeding in completing discovery as soon as practicable. In this regard, the Proceedings Officer, except as otherwise directed by the Administrative Law Judge who has been assigned to decide the case, shall have the authority:

(a) Concerning any discovery notice served within the time permitted for discovery pursuant to § 12.30(d), to rule upon—

(1) Motions for protective orders pursuant to § 12.30(b)(2); and

(2) Motions for an order compelling discovery pursuant to § 12.30(b)(3); and

(b) During the time period permitted for discovery pursuant to § 12.30(d), and thereafter if so directed by the Administrative Law Judge assigned to decide the case—

(1) To rule upon—

(i) Motions for leave to serve written interrogatories in excess of the number permitted by § 12.32; and

(ii) Motions to enlarge the time permitted for discovery under § 12.30(d) for one additional period not to exceed thirty days; and

(iii) Procedural motions; and

(2) To issue, if warranted, orders and subpoenas pursuant to § 12.36 directing non-parties to comply with a discovery notice; and

(3) To hold pre-decision conferences in the manner prescribed by § 12.303; and

(c) To make recommendations to the Administrative Law Judge assigned to the case as to what action should be taken pursuant to § 12.9(b), 12.30(c), or 12.35, if counsel for a party engages in abusive conduct, or if a party fails to comply with a discovery notice or request, an order compelling discovery, or otherwise abuses the discovery procedure prescribed in these rules.

§ 12.302 Appeal of a discovery order issued by a proceedings officer.

Any party aggrieved by a discovery-related order issued by a Proceedings Officer may appeal such order by filing, within five (5) days after service upon him of the discovery order, a motion to vacate or modify such order, or any part thereof, setting forth the grounds therefor, and specifying whatever other relief that the moving party may seek. Upon the timely filing of such a motion, the Proceedings Clerk immediately shall forward the motion and any other relevant materials of record to the Administrative Law Judge assigned to the proceeding, or, if no Administrative Law Judge has yet been assigned to the case, or if the assigned judge is unavailable, to the Chief Administrative Law Judge or such other Administrative Law Judge as the Chief Judge may designate, who shall, by appropriate order and within ten days after the motion is forwarded, absent extraordinary circumstances, grant or deny in whole or in part the motion and the other relief sought. A ruling on a motion to vacate or modify a discovery order issued by a Procedings Officer shall not limit or affect the authority of an Administrative Law Judge to issue orders pursuant to § 12.34 for the production of documents and tangible evidence, and the submission of written testimony.

§ 12.303 Pre-decision conferences.

Subject to § 12.301, during the time period permitted for discovery pursuant to § 12.30(d), and thereafter if so directed by the Administrative Law Judge assigned to decide the case, the Proceedings Officer may, in his discretion, conduct one or more pre-decision conferences to be held in Washington, D.C. or by telephone, with all parties, for the purposes of—

(a) Discussing the advisability of electing the voluntary decisional procedure;

(b) Encouraging a settlement of the entire case, or any part thereof (such discussions may be *ex parte* with the consent of all parties);

(c) Simplifying or clarifying issues;

(d) Obtaining stipulations, admissions of fact and of authenticity of documents;

(e) Discussing amendments or supplements to the pleadings;

(f) Encouraging an early settlement of disputes relating to discovery; and

(g) Discussing any matters of relevance in the proceeding.

At or following the conclusion of a pre-decision conference, the Proceedings Officer may serve a pre-decision memorandum and order setting forth the agreements reached by the parties, any procedural determinations made by him, and the issues for resolution not disposed of by admissions or agreements by the parties. If the Administrative Law Judge assigned to decide the case so directs, such an order shall control the subsequent course of the proceeding unless modified to prevent injustice.

§ 12.304 Functions and responsibilities of the Administrative Law Judge.

Once he has been assigned the case, the Administrative Law Judge shall be responsible for the fair and orderly conduct of a formal decisional proceeding and shall have the authority—

(a) To issue such orders as are described in § 12.34 of these rules;

(b) To issue subpoenas pursuant to §§ 12.34, 12.36, and 12.313 of these rules;

(c) To take such action as is appropriate pursuant to § 12.35 if a party fails to comply with a discovery order or request, or an order issued pursuant to § 12.34 of these rules;

(d) Except as provided in §§ 12.201 and 12.302 to consider and rule upon all motions;

(e) In his discretion, to conduct pre-decision conferences, for the purposes prescribed in § 12.303, at any time after a proceeding has commenced pursuant to § 12.26(c);

(f) To issue pre-hearing orders as required by § 12.312(a);

(g) To certify interlocutory matters to the Commission for its determination in accordance with § 12.309;

(h) To issue orders of dismissal pursuant to § 12.308;

(i) To issue default orders for good cause against parties who fail to participate in the proceeding, or to comply with these rules;

(j) If appropriate, to issue orders for summary disposition in the manner prescribed by § 12.310;

(k) If an oral hearing is ordered, to preside at the oral hearing, which shall include the authority to receive relevant evidence, to administer oaths and affirmations, to examine witnesses, and to rule on offers of proof;

(l) To make the initial decision; and

(m) To issue such orders, and take any other actions as are required to give effect to these rules.

§ 12.305 Disqualification of Administrative Law Judge.

(a) *At his own request.* An Administrative Law Judge may withdraw from a formal decisional proceeding when he considers himself to be disqualified on the grounds of personal bias, conflict of interest, or similar bases. In such event, he shall immediately notify the Commission and each of the parties of his withdrawal and of his basis for such action.

(b) *Upon the request of a party.* Any party may request an Administrative Law Judge to disqualify himself on the grounds of personal bias, conflict of interest, or similar bases. Interlocutory review of an order denying such a request may be sought without certification of the matter by an Administrative Law Judge, only in accordance with the procedures set forth in § 12.309 of these rules.

§ 12.306 Filing of documents; subscription; service.

Except as otherwise specifically provided in these rules, all documents filed in a formal decisional proceeding including, but not limited to, amended or supplemental pleadings, motions, discovery notices or requests, and responses thereto, documents filed or produced pursuant to § 12.34 of these rules, and submissions of proof, shall meet the requirements of §§ 12.11 and 12.12 of the rules as to form, and shall be filed and served in accordance with § 12.10 of the Reparation Rules.

§ 12.307 Amended and supplemental pleadings.

(a) *Amendments to pleadings.* At any time before the parties have concluded their submissions of proof, the Administrative Law Judge may allow amendments of the pleadings either upon written consent of the parties or for good cause shown. Any party may file a response to a motion to amend the pleadings within ten (10) days after the date of service upon him of the motion.

(b) *Supplemental pleadings.* At any time before the parties have concluded their submissions of proof, and upon such terms as are just, an Administrative Law Judge may, upon motion by a party, permit a party to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleadings sought to be supplemented and which are relevant to the issues in the proceeding. Any party may file a response to a motion to supplement the pleadings with ten (10) days after the date of service upon him of the motion.

(c) *Pleadings to conform to the evidence.* When issues not raised by the pleadings but reasonably within the scope of a formal decisional proceeding are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

§ 12.308 Motions.

(a) *In general.* An application for a form of relief not otherwise specifically provided for in this Subpart E shall be made by a motion, which shall be in writing (unless made on the record during an oral hearing). The motion shall state the relief sought and the basis for the relief and may set forth the authority relied upon. All motions, unless otherwise provided in these rules, shall be directed to the Administrative Law Judge before the initial decision is filed, and to the Commission after the initial decision is filed.

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten (10) days after service of the motion upon him, or within such longer or shorter period as established by these rules, or as the Administrative Law Judge or the Commission may direct.

(c) *Dismissal.*—(1) *By the Administrative Law Judge.* The Administrative Law Judge, acting on his own motion, may, at any time after he has been assigned the case:

(i) Dismiss the entire proceeding, without prejudice to counterclaims, if he finds that none of the matters alleged in the complaint state a claim that is cognizable in reparations; or

(ii) Order dismissal of any claim, counterclaim, or party from the proceeding if he finds that such claim or counterclaim (by itself, or as applied to a party) is not cognizable in reparations.

(2) *Motion for dismissal by a party.* Any party who believes that grounds exist for dismissal of the entire complaint, of any claim therein, of any counterclaim, or of a party from the proceeding, may file a motion for dismissal specifying the claims, counterclaims, or parties to be dismissed and the reasons therefor. Upon consideration of the whole record, the Administrative Law Judge may grant or deny such motion, in whole or in part.

(3) *Content and effect of order of dismissal.* Any order of dismissal entered pursuant to this rule shall contain a brief statement of the findings and conclusions which serve as the basis for the order. An order of dismissal of the entire proceeding pursuant to this rule shall have the effect of an initial decision which may be appealed to the Commission in accordance with the requirements set forth in § 12.401 of these rules.

(d) *Motions for procedural orders.* Motions for procedural orders, including motions for extensions of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

(e) *Dilatory motions.* Repetitive or numerous motions dealing with the same subject matter shall not be permitted.

§ 12.309 Interlocutory review by the commission.

Interlocutory review by the Commission of a ruling on a motion by an Administrative Law Judge may be sought only as prescribed in this rule—

(a) *When interlocutory appeal may be taken.* An interlocutory appeal may be permitted, in the discretion of the Commission, under the following circumstances:

(1) The appeal is from a ruling pursuant to §§ 12.102, 12.202, or 12.305 refusing to grant a motion to disqualify a Judgment Officer or Administrative Law Judge;

(2) The appeal is from a ruling pursuant to § 12.9 suspending an attorney from participation in a reparation proceeding;

(3) Upon a determination by the Administrative Law Judge certified to the Commission either in writing or on the record, that (i) a ruling sought to be appealed involves a controlling question of law or policy; (ii) an immediate appeal may materially advance the ultimate resolution of the issues in the proceeding; and (iii) subsequent reversal of the ruling would cause unnecessary delay or expense to the parties; or

(4) The appeal is from a ruling which satisfies the conditions of paragraphs (a)(3)(i)(ii)(iii) of this section, despite the absence of certification, and extraordinary circumstances are shown to exist.

(b) *Procedure to obtain interlocutory review.* An application for interlocutory review may be served and filed within ten (10) days after service of a ruling described in paragraphs (a)(1), (a)(2), and (a)(4) of this section or of notice that a determination has been made pursuant to paragraph (a)(3) of this section. The application for interlocutory review shall contain—

(1) A statement of the facts necessary to an understanding of the controlling questions determined by the Administrative Law Judge, and to an understanding of the extraordinary circumstances warranting interlocutory review by the Commission;

(2) A statement of the question or issue involved in the ruling upon which the application for review is based;

(3) A statement of the reasons why, in the opinion of the party requesting review, the ruling was erroneous and should be reversed or modified; and

(4) A copy of all papers filed by the parties that relate to the subject matter of the ruling at issue, including the order containing the ruling.

Within seven (7) days after service of the application for interlocutory review, any party may file a response in opposition to the application.

(c) *Standard for review.* In the absence of extraordinary circumstances, the Commission will not review a ruling of an Administrative Law Judge prior to the Commission's consideration of the proceeding pursuant to Subpart F of these rules. A Commission denial of an application for interlocutory review shall be without prejudice to the applying party's right to raise any argument made in the application as an issue in an appeal taken pursuant to Subpart F of these rules.

(d) *Proceedings not stayed.* The filing of an application for interlocutory review and a grant of review shall not stay proceedings before an Administrative Law Judge (or a Judgment Officer, if applicable) unless that official or the Commission shall so order. The Commission will not consider a motion for a stay unless the motion shall have first been made to the Administrative Law Judge (or, if applicable, the Judgment Officer) and denied.

(e) *Interlocutory review by the Commission on its own motion.* Nothing in this rule should be construed as restricting the Commission from acting on its own motion to review on an interlocutory basis any ruling of an Administrative Law Judge, Proceedings Officer or a Judgment Officer in any proceeding commenced pursuant to § 12.26 of these rules.

§ 12.310 Summary disposition.

(a) *Filing of motions, answers.* Any party who believes that there is no genuine issue of material fact to be determined and that he is entitled to a decision as a matter of law concerning all issues of liability in the proceeding may file a motion for summary disposition at any time before a determination is made by the Administrative Law Judge to order an oral hearing in the proceeding. Any adverse party, within ten (10) days after service of the motion, may file and serve opposing papers or may countermove for summary disposition.

(b) *Supporting papers.* A motion for summary disposition shall include a statement of all material facts as to which the moving party contends that there is no genuine issue, supported by the pleadings, and by affidavits, other verified statements, admissions,

stipulations, and interrogatories. The motion may also be supported by briefs containing points and authorities in support of the contention of the party making the motion. When a motion is made and supported as provided in this Section, unless otherwise ordered by the Administrative Law Judge, an adverse party may not rest upon the mere allegations, but shall serve and file in response a statement setting forth those material facts as to which he contends a genuine issue exists, supported by affidavits and other verified material. He may also submit a brief of points and authorities.

(c) *Oral argument.* Oral argument may be heard at the discretion of the Administrative Law Judge and shall be heard in Washington, D.C., or by telephonic conference call. Such argument shall be recorded, and written transcripts shall be made in the event that a grant or denial of summary disposition is reviewed by the Commission.

(d) *Summary disposition upon motion of the Administrative Law Judge.* If the Administrative Law Judge believes that there may be no genuine issue of material fact to be determined and that one of the parties may be entitled to a decision as a matter of law, he may direct the parties to submit papers in support of and in opposition to summary disposition, and may hear oral argument, substantially as provided in paragraphs (a), (b) and (c) of the section.

(e) *Ruling on summary disposition.* The Administrative Law Judge shall grant summary disposition if the undisputed pleaded facts, affidavits, other verified statements, admissions, stipulations, and matters of official notice, show that (1) there is no genuine issue as to any material fact; (2) there is no necessity that further facts be developed in the record; and (3) a party is entitled to a decision as a matter of law.

(f) *Review of ruling; appeal.* An application for interlocutory review of an order denying a motion for summary disposition shall not be allowed. Interlocutory review of an order granting summary disposition which disposes of less than all of the issues in the proceeding may be sought only in accordance with § 12.309 of these rules. An order granting summary disposition which is dispositive of all issues, and as to all parties, in the proceeding may be appealed to the Commission in accordance with the requirements set forth in § 12.401 of these rules.

§ 12.311 Disposition of proceeding or issues without oral hearing.

If the Administrative Law Judge determines that the documentary proof and other tangible forms of proof submitted by the parties are sufficient to permit resolution of some or all of the factual issues in the proceeding without the need for oral testimony, he may order that all proof relating to such issues be submitted in documentary and tangible form, and dispose of such issues without an oral hearing. In such an event, proof in support of the complaint, answer, and reply, may be found in those verified documents, in depositions on written interrogatories, in admissible documents obtained through discovery, in other verified statements of fact, documents and tangible evidence.

§ 12.312 Oral hearing.

(a) *Notification; prehearing order.* If and when the proceeding has reached the stage of an oral hearing, the Administrative Law Judge, giving due regard for the convenience of the parties, shall set a time for hearing, as well as a location prescribed by paragraph (b) of this section, and shall file with the Proceedings Clerk, for immediate service upon the parties—

(1) An order requiring the parties to file and serve, within fifteen days after service of the order, a prehearing memorandum setting forth briefly—

(i) A statement of all issues to be tried at the hearing;

(ii) An identification of each witness expected to be called by that party;

(iii) A summary of the testimony each witness is expected to provide; and

(2) A notice stating the time and location of the hearing.

Prior to the hearing, the Administrative Law Judge may issue an order based on the contents of the parties' memoranda filed pursuant to paragraph (a)(1) of this section, which, unless modified to prevent injustice, shall control the scope of matters to be tried at the oral hearing. If any change in the time or place of the hearing becomes necessary, it shall be made by the Administrative Law Judge, who, in such event, shall file with the Proceedings Clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript. Hearings shall proceed expeditiously and, absent extraordinary circumstances, shall be held in one location and shall continue, without suspension, until concluded.

(b) *Location of hearing.* Unless the Director of the Office of Proceedings for reasons of administrative economy or practical necessity determines otherwise, and except as provided in this subparagraph, the location of an oral hearing shall be in one of the following cities: Albuquerque, N.M.; Atlanta, Ga.; Boston, Mass.; Chicago, Ill.; Cincinnati, Ohio; Columbia, S.C.; Denver, Colo.; Houston, Tex.; Kansas City, Mo.; Los Angeles, Cal.; Minneapolis, Minn.; New Orleans, La.; New York, N.Y.; Oklahoma City, Okla.; Phoenix, Ariz.; San Diego, Cal.; San Francisco, Cal.; Seattle, Wash.; St. Petersburg, Fla.; and Washington, D.C. The Administrative Law Judge may, in any case where a party avers, in an affidavit, that none of the foregoing cities is located within 300 miles of his principal residence, waive this subparagraph and, upon giving due regard for the convenience of all of the parties, order that the hearing be held in a more convenient locale.

(1) *Who may appear.* The parties may appear in person, by counsel, or by other representatives of their choosing, subject to the provisions of § 12.9 of these rules concerning practice before the Commission.

(2) *Effect of failure to appear.* If any party to the proceeding fails to appear at the hearing, or at any part thereof, he shall to that extent be deemed to have waived the opportunity for an oral hearing in the proceeding. The Administrative Law Judge, for just cause, may take such action as is appropriate pursuant to § 12.35 of these rules against a party who fails to appear at the hearing. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present may present his evidence, in whole or in part, in the form of affidavits or by oral testimony, before the Administrative Law Judge.

(c) *Public hearings.* All oral hearings shall be public except that upon application of a party or affected witness the Administrative Law Judge may direct that specific documents or testimony be received and retained non-publicly in order to prevent unwarranted disclosure of trade secrets or sensitive commercial or financial information or an unwarranted invasion of personal privacy.

(d) *Conduct of the hearing.* Subject to paragraph (f) of this section, and except as otherwise provided, at an oral hearing every party shall be entitled to—

(1) *Conduct direct and cross-examination of parties and witnesses.* All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation, which shall be administered by the Administrative

Law Judge. Unless otherwise ordered by the Administrative Law Judge, parties shall be entitled to present oral direct testimony and other documentary proof, and to conduct direct examination and cross examine adverse parties and witnesses. To expedite the hearing, the Administrative Law Judge may, in his discretion, order that the direct testimony of the parties and their witnesses be presented in documentary form, by affidavit, interrogatory, and other documents. In any event, the Administrative Law Judge, in his discretion, may permit cross examination, without regard to the scope of direct testimony, as to any matter which is relevant to the issues in the proceeding;

(2) *Introduce exhibits.* The original of each exhibit introduced in evidence or marked for identification shall be filed unless the Administrative Law Judge permits the substitution of copies for the original documents. A copy of each exhibit introduced by a party or marked for identification at his request shall be supplied by him to the Administrative Law Judge and to each other party to the proceeding. Exhibits shall be maintained by the reporter who shall serve as custodian of the exhibits until they are transmitted to the Proceedings Clerk pursuant to paragraph (f) of this section;

(3) *Make objections.* A party shall timely and briefly state the grounds relied upon for any objection made to the introduction of evidence. Formal exception to an adverse ruling shall not be required; and

(4) *Make offers of proof.* When an objection to a question propounded to a witness is sustained, the examiner may make a specific offer of what he expects to prove by the answer of the witness. Rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(e) *Admissibility of evidence.* Relevant, material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable and unduly repetitious evidence shall be excluded.

(f) *Record of an oral hearing.* Oral hearings for the purpose of taking evidence shall be recorded and shall be transcribed in written form under the supervision of the Administrative Law Judge by a reporter employed by the Commission for that purpose. The original transcript shall be a part of the record and shall be the sole official transcript. Copies of transcripts, except those portions granted non-public treatment, shall be available from the reporter at rates not to exceed the maximum rates fixed by the contract between the Commission and the reporter. As soon as practicable after the close of the hearing, the reporter shall transmit to the Proceedings Clerk the transcript of the testimony and the exhibits introduced in evidence at the hearing, except such portions of the transcript and exhibits as shall have already been delivered to the Administrative Law Judge.

(g) *Proposed findings of fact and conclusions law; briefs.* An Administrative Law Judge, upon his own motion or upon motion of a party, may permit the filing of post-hearing proposed findings of fact and conclusions of law. Absent an order permitting such findings and conclusions, none shall be allowed. Unless otherwise ordered by the Administrative Law Judge and for good cause shown, the proposed findings and conclusions (including briefs in support thereof), shall not exceed twenty-five (25) pages and shall be filed not later than forty-five (45) days after the close of the oral hearing.

§ 12.313 Subpoenas for attendance at an oral hearing.

(a) *In general.*—(1) *Application for issuance of subpoenas.* An application for a subpoena requiring a party or other person to appear and testify at an oral hearing (subpoena *ad testificandum*) or to appear and testify and to produce specified documentary or tangible evidence at the hearing (subpoena *duces tecum*), shall (unless made orally at a hearing) be filed in writing and in duplicate, but need not be served upon other parties. The application shall be accompanied by the original and one copy of the subpoena.

(2) *Standards for issuance or denial of subpoenas.* The Administrative Law Judge considering any application for a subpoena shall issue the subpoena if he is satisfied the application complies with this rule and the request is not unreasonable, oppressive, excessive in scope or unduly burdensome. In the event the Adminstrative Law Judge determines that a requested subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena, or may issue it only upon such conditions as he determines fairness requires.

(b) *Special Requirements Relating to Application for an Issuance of Subpoenas for the Appearance of Commission Employees.*—(1) *Form.* An application for the issuance of a subpoena shall be made in the form of a written motion served upon all other parties, if the subpoena would require the appearance of a Commissioner or an official or employee of the Commission.

(2) *Content.* The motion shall specifically describe the material to be produced, the information to be disclosed, or the testimony to be elicited from the witness, and shall show (i) the relevance of the material, information, or testimony to the matters at issue in the proceeding; (ii) the reasonableness of the scope of the proposed subpoena; and (iii) that such material, information, or testimony is not available from other sources.

(3) *Rulings.* The motion shall be decided by the Administrative Law Judge and his order shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the witnesses as may appear necessary and appropriate for the protection of the public interest.

(c) *Service of subpoenas.*—(1) *How effected.* Service of a subpoena upon a party shall be made in accordance with § 12.10 of these rules. Service of a subpoena upon any other person shall be made by delivering a copy of the subpoena to him as provided in paragraph (c) (2) or (3) of this section, and by tendering to him the fees for one day's attendance and the mileage as specified in paragraph (e) of this section. When the subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service.

(2) *Service upon a natural person.* Delivery of a copy of a subpoena and tender of fees and mileage to a natural person may be effected by (i) handing them to the person; (ii) leaving them at his office with the person in charge thereof or, if there is no one in charge, by leaving the subpoena in a conspicuous place therein; (iii) leaving them at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; (iv) mailing them by registered or certified mail to him at his last known address; or (v) any other method whereby actual notice is given to him and the fees and mileage are timely made available.

(3) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees and mileage may be effected by (i) handing them to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; (ii) mailing them by registered or certified mail to any such representative at his last known address; or (iii) any other method whereby actual notice is given

to any such representative and the fees and mileage are timely made available.

(d) *Motion to quash subpoena.* At or any time before the time specified in the subpoena for compliance therewith, a person upon whom a subpoena has been served may file a motion to quash or modify the subpoena with the Administrative Law Judge who issued the subpoena, and serve a copy of the motion on the party who requested the subpoena. Such motion shall include a brief statement of the reasons therefor. After due notice to the person upon whose request the subpoena was issued, and an opportunity for that person to respond, the Administrative Law Judge may (1) quash or modify the subpoena, or (2) condition denial of the application to quash or modify the subpoena upon just and reasonable terms, including, on the case of a subpoena *duces tecum*, a requirement that the person on whose behalf the subpoena was issued shall advance the reasonable cost of producing documentary or other tangible evidence.

(e) *Attendance and mileage fees.* Persons summoned to testify at a hearing under requirement of subpoenas are entitled to the same fees and mileage as are paid to witnesses in the courts of the United States. Fees and mileage shall be paid by the party at whose instance the persons are subpoenaed or called.

(f) *Enforcement of subpoenas.* Upon failure of any person to comply with a subpoena issued at the request of a party, that party may petition the Commission, in its discretion, to institute an action in an appropriate United States District Court for enforcement of the subpoena.

§ 12.314 Initial decision.

(a) *In general.* The Administrative Law Judge as soon as practicable after the parties have completed their submissions of proof, or after the conclusion of an oral hearing if one is held, shall render the initial decision, which he shall forthwith file with the Proceedings Clerk, and a copy of which shall be served immediately by the Proceedings Clerk upon each of the parties. The Proceedings Clerk shall also serve a notice, to accompany the initial decision, of the effect of a party's failure timely to appeal to the Commission the initial decision, as provided in paragraphs (d) and (e) of this section, and the effect of a failure of a party who has been ordered to pay a reparation award timely to file the documents required by § 12.407(c).

(b) *Content of initial decision.* In the initial decision the Administrative Law Judge shall:

(1) Include a brief statement of his findings as to the facts, with references to those portions of the record which support his findings;

(2) Make a determination whether or not the respondent has violated any provision of the Commodity Exchange Act, or rule, regulation or order thereunder;

(3) Make a determination whether the complainant is liable to any respondent who has made a counterclaim in the proceeding;

(4) Determine the amount of damages, if any, that the complainant has sustained as a result of respondent's violations, and the amount, if any, for which complainant is liable to a respondent based on a counterclaim; and

(5) Include an order directing either the respondent or the complainant, depending upon whose liability is greater, to pay an amount based on the difference in the amounts determined pursuant to paragraph (b)(4) of this section, on or before a date fixed in the order.

(c) *Costs.* Except as provided in §§ 12.30(c) and 12.315 of these rules, the Administrative Law Judge may, in the initial decision, award costs (including the cost of instituting the proceeding and, if appropriate, reasonable attorney's fees) to the party in whose favor a judgment is entered.

(d) *Effect of initial decision.* The initial decision and order shall become the final decision and order of the Commission, without further order by the Commission, thirty (30) days after service thereof, except that—

(1) The initial decision shall not become the final decision as to a party who shall have timely filed and perfected an appeal thereof to the Commission, in accordance with § 12.401 of these rules; and

(2) The initial decision shall not become final as to any party to the proceeding if, within thirty (30) days after service of the initial decision, the Commission itself shall have placed the case on its own docket for review or stayed the effective date of the initial decision.

(e) *Effect of failure to file and perfect an appeal to the Commission.* Unless the Commission takes review of an initial decision on its own motion, the timely filing and perfection of an appeal to the Commission of the initial decision is mandatory as a prerequisite to appellate judicial review of a final decision and order entered pursuant to these rules.

§ 12.315 Consequences of overstating damages claims not in excess of $10,000

If a party, who has claimed damages in excess of $10,000, is adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to a damage award to which an opposing party may be adjudged to be entitled, and exclusive of interest and costs, the Administrative Law Judge may assess such party the cost of the transcript of an oral hearing, if such a hearing is held, and, depending upon whether such party paid any part of the filing fee for the proceeding, deny the party such costs or impose such costs on that party.

Subpart F—Commission Review of Decisions

§ 12.400 Scope and applicability of rules.

The rules set forth in this subpart are applicable to proceedings forwarded pursuant to Subparts D and E of these rules. Except as provided in §§ 12.106(e) and 12.403(b) of these rules, the rules set forth in this subpart are not applicable to proceedings forwarded pursuant to Subpart C of the Reparation Rules.

§ 12.401 Appeal to the Commission.

(a) *How effected.* Any aggrieved party to a proceeding forwarded pursuant to § 12.26 (b) or (c) of these rules may appeal to the Commission an initial decision or other disposition of the entire proceeding by complying with the requirements of this section. An appealing party shall serve upon all parties and file with the Proceedings Clerk a notice of appeal within fifteen (15) days after service of the initial decision or other order disposing of the entire proceeding. The notice need consist only of a brief statement indicating the filing party's intent to appeal the initial decision, and shall include the date upon which the initial decision was rendered, the names of all parties, and the docket number of the proceeding. An appellate filing fee in the amount of $50 shall be paid at the time of filing a notice of appeal. The failure of a party timely to file and serve a notice of appeal, and to pay the appellate filing fee, in accordance with this paragraph, or to perfect the appeal in accordance with paragraph (b) of this section, shall constitute a voluntary waiver of any objection to the initial decision, or other order disposing of the proceeding, and of all further administrative or judicial review under these rules and the Commodity Exchange Act.

(b) *Perfecting the appeal; appeal brief.* An appeal shall be perfected by the appealing party by timely filing with the

Proceedings Clerk an appeal brief which meets the requirements of paragraphs (b) and (d) of this section. An original and one copy of the appeal brief shall be filed within thirty (30) days after filing of the notice of appeal. By motion of the appealing party, the Commission may, for good cause shown, extend the time for filing the appeal brief. If the appeal brief is not filed within the time prescribed in this subparagraph, the Commission may, upon its own motion or upon motion by a party, dismiss the appeal, in which event the initial decision shall become the final decision and order of the Commission, effective upon service of the order of dismissal.

(c) *Answering brief.* Any party upon whom the appealing party serves a brief may, within thirty (30) days after service of the appeal brief, file an original and one copy of an answering brief, and serve one copy thereof, unless the time limit is extended by the Commission upon motion of the party and for good cause shown.

(d) *Briefs.* Parties filing an appeal brief or answering brief pursuant to this § 12.401 shall meet the requirements of § 12.11 of these rules as to form. The content of briefs shall satisfy the requirements of § 10.102(d) of the Commission's Regulations, 17 CFR 10.102(d), except that any party, with leave of the Commission, may file an informal document in lieu of a brief. No brief shall exceed thirty-five (35) pages in length without leave of the Commission.

(e) *Oral argument.* Any party may request, in writing and within the time provided for filing the initial briefs, the opportunity to present oral argument before the Commission, which the Commission may, in its discretion, grant or deny. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument shall proceed in accordance with the provisions of § 10.103 of the Commission's Regulations, 17 CFR 10.103.

(f) *Scope of review.* On review, the Commission may, in its discretion, consider *sua sponte* any issues arising from the record and may base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

§ 12.402 Appeal of disposition of less than all claims or parties in a proceeding.

(a) *In general.* Where two or more different claims for relief are presented, or where multiple parties are involved, in a proceeding forwarded pursuant to § 12.26 (b) or (c) of these rules, the Judgment Officer or Administrative Law Judge, may upon his own motion or by motion of a party, direct that an initial decision or other order disposing of one or more, but fewer than all of the claims or parties, shall be final and immediately appealable to the Commission. Such a direction may be made only upon an express determination that there is no just reason for delay. When such a direction is made, a party may appeal the initial decision or order in accordance with the procedure prescribed by § 12.401 of these rules.

(b) *When decision is not appealable.* In the absence of such a direction by the Judgment Officer or an Administrative Law Judge, an initial decision or order disposing of fewer than all of the claims or all of the parties shall be subject to revision by the decisionmaker at any time before a disposition is made of all remaining claims or parties, and no appeal may be taken to the Commission pursuant to this rule.

§ 12.403 Commission review on its own motion.

(a) *In general.* The Commission may on its own motion, within 30 days after it has been served on all parties, determine to review an initial decision, or other order disposing of all issues in the proceeding as to all claims and all parties, in a proceeding forwarded pursuant to § 12.26 (b) and (c) of these rules. In such event, the Commission may determine the scope of the issues on review, and make provisions for the filing of briefs or, if deemed appropriate, such other means for the parties to present their views. The parties shall be duly notified thereof by the Proceedings Clerk.

(b) *Commission review of a final decision in a voluntary decisional proceeding.* If such action is necessary to prevent manifest injustice, the Commission may, upon its own motion, review a final decision issued pursuant to § 12.106 of these rules by appropriate order filed with the Proceedings Clerk within 30 days after service upon the parties of the final decision. In such event, the Commission may determine the scope of the issue on review, make provisions for the filing of briefs (or, if deemed appropriate, such other means for the parties to present their views). The parties shall be duly notified thereof by the Proceedings Clerk

§ 12.404 The record of proceedings.

The record of proceeding on appeal of reveiw before the Commission shall include: The pleadings; motions and requests filed, and rulings thereon; the transcript of the testimony taken at an oral hearing, together with the exhibits filed therein; the transcript of testimony taken during an oral examination by telephone; any statements or stipulations filed in any proceeding; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions, and orders and briefs as may have been permitted to be filed in connection with an oral hearing; such statements of objections, and briefs in support thereof, as may have been filed in the proceedings; and the initial (or final) decision, or other order disposing of issues in the proceeding.

§ 12.405 Leave to adduce additional evidence.

Any time prior to issuance of its final decision pursuant to § 12.406, the Commission may, after notice to the parties and an opportunity for them to present their views, reopen the hearing to receive further evidence. The application shall show to the satisfaction of the Commission that the additional evidence is material, and that there were reasonable grounds for failure to adduce such evidence at the hearing. The Commission may receive the additional evidence or may remand the proceeding to the Judgment Officer or Administrative Law Judge to receive the additional evidence.

§ 12.406 Final decision of the Commission.

(a) *Opinion and order.* Unless the Commission, in accordance with paragraph (b) of this section, orders summary affirmance of the initial decision, the Commission's opinion and order in a proceeding appealed pursuant to § 12.401 of these rules shall constitute the Commission's final decision, effective upon service. On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial decision and make any findings or conclusions which in its judgment are warranted based on the record in the proceeding.

(b) *Order on summary affirmance.* If the Commission, in its opinion, finds that the result reached in the initial decision is substantially correct and that none of the arguments on appeal made by the appealing party raise any important question of law or policy, the Commission may, by appropriate order, summarily affirm the initial decision and order without opinion, which shall constitute the Commission's final decision, effective upon service. Unless the Commission expressly indicates otherwise in its order, an order of summary affirmance does not reflect a

Commission determination to adopt the initial decision, including any rationale contained therein, as its opinion and order, and neither initial decision nor the Commission's order of summary affirmance shall serve as a Commission precedent in other proceedings.

(c) *Filing and service of final decision.* The Commission shall, upon issuance of a final decision pursuant to this § 12.406, file the final decision with the Proceeding's Clerk, who shall forthwith serve upon each of the parties a copy of the final decision as well as notice of the effect of a party's failure to pay a reparation award as provided in § 12.407 of these rules, and of an aggrieved party's right to obtain judicial review of the final decision pursuant to Section 14(e) of the Act, 7 U.S.C. 18(e).

§ 12.407 Satisfaction of reparation award; enforcement; sanctions.

(a) *Satisfaction of reparation award.*—(1) *Where initial decision has become the final decision.* Any reparation award ordered in an initial decision, or similar dispositive order (but not a final decision issued pursuant to § 12.106 of these rules), shall be satisfied in full within forty-five (45) days after service of the initial decision, unless a timely appeal thereof has been perfected pursuant to § 12.401, or unless the Commission, pursuant to § 12.403(a), has stayed the effective date of the initial decision.

(2) *Final decision pursuant to § 12.406.* Any reparation award ordered in a final decision of the Commission issued pursuant to § 12.406 of these rules shall be satisfied in full within fifteen (15) days after service of the final decision, or such other longer period of time as may be specified in the final decision, unless a petition for review is filed in accordance with section 14(e) of the Act, 7 U.S.C. 18(e).

(b) *Enforcement of reparation award.* If any person against whom a reparation award has been made does not timely comply with paragraph (a) of this section, the party in whose favor the award is made is entitled to seek enforcement of award in accordance with the procedure prescribed in section 14(d) of the Commodity Exchange Act, 7 U.S.C. 18(d).

(c) *Automatic suspension.* A person required to pay a reparation award shall be prohibited from trading on all contract markets and if such person is registered, his registration shall be suspended automatically, without further notice, unless such person shall, within fifteen (15) days after the time limit for satisfaction of an award (as prescribed in paragraph (a) of this section) expires, file with the Proceedings Clerk and serve on the other parties—

(1) A copy of a certified check or the equivalent showing statisfaction of the award; or

(2) A sworn release executed by each recipient of a reparation award, which has not been satisfied by payment with a certified check or the equivalent; or

(3) A verified statement that a judicial appeal has been filed and perfected in accordance with section 14(e) of the Act, 7 U.S.C. 18(e). (This subsection is applicable only in proceedings commenced pursuant to § 12.26 (b) or (c), and only if the person has timely filed and perfected an appeal to the Commission as prescribed in § 12.401.)

(d) *Reinstatement.* The sanctions imposed in accordance with paragraph (c) of this section shall remain in effect until the person required to pay the reparation award demonstrates to the satisfaction of the Commission that he has paid the amount required in full with interest at the prevailing rate computed in accordance with section 6621 of the Internal Revenue Code from the date directed in the final order to the date of payment.

(e) *Automatic suspension after appeal.* If on appeal to the United States Court of Appeals the appellee prevails, or if the appeal is dismissed, the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty (30) days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction, the suspension shall become effective ten (10) days after the expiration of such stay, unless prior thereto the judgment of the court or the final order of the Commission has been satisfied.

§ 12.408 Delegation of authority to Chief of the Opinions Section.

Pursuant to the authority granted under Section 2(a)(4) and 2(a)(11) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(c) and 4a(j), the Commission hereby delegates, until such time as it orders otherwise, the following functions to the Chief of the Opinions Section, to be performed by him or by such person or persons under his direction as he may designate from time to time:

(a) With respect to reparation proceedings conducted pursuant to Section 14 of the Commodity Exchange Act, as amended, 7 U.S.C. 18, and subject to the Commission's Reparation Rules as set forth in Part 12 of this Chapter, to:

(1) Consider and decide miscellaneous procedural motions that may be directed to the Commission pursuant to Part 12 of these rules after the initial decision or other order disposing of the entire proceeding has been filed;

(2) Remand, with or without specific instructions, initial decisions or other orders disposing of the entire proceeding to the appropriate officer (Director of the Office of Proceedings, Judgment Officer, Proceedings Officer or Administrative Law Judge) in the following situations—

(i) Where a default order or award has been made pursuant to Part 12 of these rules and a motion to vacate the default or an equivalent request has been made; or

(ii) Where, in his judgment, clarification or supplementation of an initial decision or other order disposing of the entire proceeding prior to Commission review is appropriate; and

(iii) Where, in his judgment, a ministerial act necessary to the proper conduct of the proceeding has not been performed.

(3) Deny applications for interlocutory review by the Commission of a ruling of an Administrative Law Judge in cases in which the Administrative Law Judge has not certified the ruling to the Commission in the manner prescribed by § 12.309 of these rules, and the ruling does not concern the disqualification of, or a motion to disqualify, an Administrative Law Judge, Proceedings Officer, or Judgment Officer, or the suspension of, or failure to suspend, an attorney from participating in reparation proceedings;

(4) Dismiss any appeal from an initial decision or other disposition of the entire proceeding by an Administrative Law Judge (or Judgment Officer), in a proceeding where such appeal is not filed or perfected in accordance with § 12.401, and deny any application for interlocutory review if it is not filed in accordance with § 12.309 of these rules;

(5) Strike any filing that does not meet the requirements of, or is not perfected in accordance with, Part 12 of these rules; and

(6) Enter any order that, in his judgment, will facilitate or expedite Commission review of an initial decision or other order disposing of the entire proceeding.

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which he believes it appropriate, the Chief of the Opinions Section may submit the matter to the Commission for its consideration.

(c) Within seven (7) days after service of a ruling issued pursuant to this § 12.408, a party may file with the Commission a petition for reconsideration of the ruling. Unless the

Commission orders otherwise, the filing of a petition for reconsideration shall not operate to stay the effective date of such ruling.

Issued in Washington, D.C., on February 15, 1984.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-4523 Filed 2-21-84; 8:45 am]

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federal register

Wednesday
February 22, 1984

Part III

Department of Education

34 CFR Parts 75, 76, and 98

Student Rights in Research, Experimental Activities, and Testing; Proposed Rulemaking

34 CFR Part 98

Student Rights in Research, Experimental Activities and Testing; Hearings; Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, and 98

Student Rights in Research, Experimental Activities, and Testing

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes regulations under section 439 of the General Education Provisions Act (GEPA). Section 439(a) of GEPA requires that, under most programs administered by the Department of Education, an award recipient or contractor make all instructional material used in connection with any research or experimental program or project available to parents of children involved in the program or project. Section 439(b) of GEPA requires a recipient of funds under these programs to obtain the permission of the parent of a child before requiring the child to submit to certain kinds of psychiatric or psychological examination, testing, or treatment.

This Notice of Proposed Rulemaking proposes procedures for handling inquiries and complaints under the section.

The Department currently has regulations that restate the substantive requirements of section 439 of GEPA. The purpose of this document is to assure compliance with section 439 of GEPA.

DATES: To be assured of consideration, comments must be received on or before May 22, 1984.

ADDRESSES: Send your comments to Charles L. Heatherly, Deputy Under Secretary for Management, Department of Education, Room 3181, 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Monika Harrison, Special Advisor to the Deputy Under Secretary for Management, at the address specified above or call (202) 245–9582.

SUPPLEMENTARY INFORMATION:

Background

The Department of Education proposes regulations to further implement section 439 of the General Education Provisions Act (GEPA). Subsection (a) of section 439 provides—

> All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

Subsection (b) of section 439 provides—

> No student shall be required as part of any applicable program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment in which the primary purpose is to reveal information concerning one or more of the following:
>
> (1) Political affiliations;
>
> (2) Mental and psychological problems potentially embarrassing to the student or his family;
>
> (3) Sex behavior and attitudes;
>
> (4) Illegal anti-social, self-incriminating and demeaning behavior;
>
> (5) Critical appraisals of other individuals with whom respondents have close family relationships;
>
> (6) Legally recognized privileged and analogous relationships such as those of lawyers, physicians, and ministers; or
>
> (7) Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of [an] unemancipated minor, without the prior written consent of the parent.

Notice of Proposed Rulemaking

The Department currently has regulations that essentially restate section 439 of GEPA. These regulations may be found in Title 34 of the Code of Federal Regulations at §§ 75.741 and 76.741 (34 CFR 75.741 and 76.741). The Secretary proposes rules to establish procedures for handling complaints that arise under section 439. The proposed procedures parallel those that are used to resolve complaints under the Family Educational Rights and Privacy Act (FERPA). The FERPA regulations are contained in 34 CFR Part 99.

Under the proposed procedures the Secretary would designate an office within the Department to investigate and review complaints of violations under section 439 of GEPA, and to provide information about the requirements of this section. The office would investigate complaints and, if it discovered a failure to comply, would give the award recipient time to remedy the violation on a voluntary basis. If a recipient fails to comply on a voluntary basis, the Secretary would be authorized to issue a notice to cease and desist, or to terminate or withhold funds, as appropriate under the laws applicable to the program involved. A grantee or contractor could appeal a termination or withholding decision based on section 439 of GEPA.

Section 439 of GEPA applies to programs that, prior to the establishment of the Department, were administered by the Commissioner of Education. Also, as a general rule, section 439 of GEPA applies to programs, administered by the Secretary, that have been authorized since the establishment of the Department. This interpretation is based on section 421 of GEPA and on two provisions in the Department of Education Organization Act (DEOA), sections 427 and 507. Section 421 of GEPA makes section 439 applicable to programs formerly administered by the Commissioner of Education.

Section 427 of the DEOA provides that GEPA applies to functions transferred by the DEOA to the extent applicable on the day preceding the effective date of the DEOA. Taken by itself, this provision would limit the applicability of section 439 to those programs formerly administered by the Commissioner. However, section 507 of the DEOA has the effect of translating "Commissioner" in section 421 of GEPA into "Secretary." Thus, for a program which is administered by the Secretary under an authority established after the effective date of the DEOA, section 439 of GEPA applies. Of course, if the law authorizing a new program specifically provides for a different outcome, section 439 would not apply. Finally, if a statute which is subject to section 439 is amended after the effective date of the DEOA, the amendment is subject to section 439 also. While this interpretation excludes some programs administered by the Secretary, most programs are covered by the provisions of section 439, including, for example, programs authorized under Chapters 1 and 2 of the Education Consolidation and Improvement Act of 1981 (ECIA), and programs under the Education of the Handicapped Act.

Section 439(a) applies to "any program or project in any applicable program." Also, section 439(b) applies to certain requirements "as part of any applicable program." Under these applicability provisions a recipient of Federal education funds is not subject in all its activities to the requirements of section 439 of GEPA merely because the recipient receives funds under a program to which section 439 applies. Instead, the procedures in these proposed regulations would apply only if there appears to be a violation under the particular program or project under a statute subject to section 439.

Based on a review of the legislative history for subsection (b), the Secretary interprets the consent requirement stated in section 439(b)(7) to apply to all of the items listed in the subsection. Thus, these proposed regulations have

been drafted so that the consent provision applies to all of the items listed in the subsection.

Finally, these proposed regulations reflect the Secretary's view that section 439(a) applies only to children. Therefore, the proposed regulations limit the coverage of section 439(a) to programs for children not above the age of 21 who are enrolled in programs or projects not above the elementary or secondary education level. The question of what constitutes the end of secondary education is a matter to be determined by the relevant State law. In contrast to subsection 439(a), subsection 439(b) applies to both adults and minors.

Invitation to Comment

The Secretary requests comments and recommendations on this Notice of Proposed Rulemaking. He is interested in receiving comments on whether the proposed procedures provide sufficient flexibility to resolve complaints on a voluntary basis. The Secretary is also interested in comments on whether a recipient should be required to advise parents, guardians, or students of their opportunity to file complaints under the proposed complaint procedures and, if so, in what manner they should be informed.

The recordkeeping requirement that would be imposed by these proposed regulations has been stated in broad terms to leave the greatest possible discretion to educational agencies and institutions to determine what records to keep. An educational agency or institution should keep records sufficient to show compliance with the section. The Secretary is interested in receiving comments on the need for guidance regarding the kind of records an educational agency or institution should keep.

The Department, in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirements to reduce regulatory burden, invites comments on whether there may be further opportunities to reduce any regulatory burdens found in the proposed regulations.

Written comments and recommendations in response to this Notice of Proposed Rulemaking may be sent to the address given at the beginning of this document. To be assured of consideration, comments in response to the Notice of Proposed Rulemaking must be received on or before the date specified at the beginning of this document. All comments received in response to the Notice of Proposed Rulemaking will be available for public inspection, during and after the comment period, at Room 3181, 400 Maryland Avenue, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except on Federal Holidays.

Executive Order 12291. These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria established in the order for major regulations.

Regulatory Flexibility Act Certification. The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect small entities that are recipients of funds under applicable programs of the Department of Education. However, the proposed regulations would not have a significant economic impact on these entities because the proposed regulations do not establish prescriptive reporting or recordkeeping requirements or impose other regulatory burdens in excess of statutory requirements.

Paperwork Reduction Act. The information collection requirements contained in these proposed regulations will be sent to OMB for review under the provisions of Section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Comments concerning information collection requirements only should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue, NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education. All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

List of Subjects in 34 CFR Part 98

Educational research, Privacy, Students, Complaint, Notice of, Complaints, Consent, Examination, Experimental programs, Family, Findings, Notice of, Inspection, Instructional material, Political affiliations, Psychiatric, Psychological, Research, Sex, Teaching methods, Teaching techniques, Testing, Treatment.

Citation of Legal Authority: A citation of statutory or legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: February 13, 1984.

T. H. Bell,

Secretary of Education.

The Secretary proposes to amend Parts 75 and 76 and to add a new Part 98 to Subtitle A of Title 34 as follows:

PART 75—DIRECT GRANT PROGRAMS

§ 75.741 [Removed]

1. Section 75.741 is removed.

PART 76—STATE-ADMINISTERED PROGRAMS

§ 76.741 [Removed]

2. Section 76.741 is removed.

3. A new Part 98 is added, to read as follows:

PART 98—STUDENT RIGHTS IN RESEARCH, EXPERIMENTAL PROGRAMS, AND TESTING

Sec.

98.1 Applicability of part.
98.2 Definitions.
98.3 Access to instructional material used in a research or experimentation program.
98.4 Protection of students' privacy in examination, testing, or treatment.
98.5 Information and investigation offfice.
98.6 Reports and records.
98.7 Filing a complaint.
98.8 Notice of the complaint.
98.9 Investigation and findings.
98.10 Enforcement of findings.

Authority: Sec. 514(a) of Pub. L. 93–380, 88 Stat. 574 (20 U.S.C. 1232h(a)); Sec. 1250 of Pub. L. 95–561, 92 Stat. 2355–2356 (20 U.S.C. 1232h(b)); and Sec. 408(a)(1) of Pub. L. 90–247, 88 Stat. 559–560, as amended (20 U.S.C. 1221e-3(a)(1)).

§ 98.1 Applicability of part.

This part applies to any program administered by the Secretary of Education that—

(a)(1) Was transferred to the Department by the Department of Education Organization Act (DECA); and

(2) Was administered by the Commissioner of Education on the day before the effective date of the DECA; or

(b) Was enacted after the effective date of the DECA, unless the law enacting the new Federal program has the effect of making section 439 of the General Education Provisions Act inapplicable.

(20 U.S.C. 1221e–3(a) (1), 1230, 1232h, 3487, 3507)

(c) The following chart lists the funded programs to which Part 98 does not apply as of February 16, 1984.

Name of program	Authorizing statute	Implementing regulations
1. High School Equivalency Program and College Assistance Migrant Program.	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) 20 U.S.C. 1070d-2).	Part 206.
2. Programs administered by the Commissioner of the Rehabilitative Services Administration.	The Rehabilitation Act of 1973 as amended by Pub. L. 95-602 (29 U.S.C. 700, et seq.).	Parts 351-356, 361, 362, 365, 366, 369-375, 378, 379, 385-390, and 395.
3. Transition program for refugee children.	Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212 (8 U.S.C. 1522(d)).	Part 538.
4. College housing..	Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749, et seq.).	Part 614.
5. Programs administered by the Director of the National Institute of Education.	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e).	Parts 703, 709, 710, 716, 718, and 720.
6. Programs administered by the Administrator of the National Center for Education Statistics.	Section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	Part 726.

§ 98.2 Definitions.

(a) The following terms used in this part are defined in 34 CFR 77: "Department," "Recipient," "Secretary."

(b) The following definitions apply to this part: "Act" means the General Education Provisions Act.

"Office" means the information and investigation office specified in § 98.5.

(20 U.S.C. 1221e-3(a)(1))

§ 98.3 Access to instructional material used in a research or experimentation program.

(a) All instructional material—including teachers' manuals, films, tapes, or other supplementary instructional material—which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project.

(b) For the purpose of this part "research or experimentation program or project" means any program or project in any program under § 98.1 (a) or (b) that is designed to explore or develop new or unproven teaching methods or techniques.

(c) For the purpose of the section "children" means persons not above age 21 who are enrolled in a program not above the elementary or secondary education level, as determined under State law.

(20 U.S.C. 1221e-3(a)(1), 1232h(a))

§ 98.4 Protection of students' privacy in examination, testing, or treatment.

(a) No student shall be required, as part of any program specified in § 98.1 (a) or (b), to submit without prior consent to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning one or more of the following—

(1) Political affiliations;

(2) Mental and psychological problems potentially embarrassing to the student or his or her family;

(3) Sex behavior and attitudes;

(4) Illegal, anti-social, self-incriminating and demeaning behavior;

(5) Critical appraisals of other individuals with whom the student has close family relationships;

(6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b) As used in paragraph (a) of this section, "prior consent" means—

(1) Prior consent of the student, if the student is an adult or emancipated minor; or

(2) Prior written consent of the parent, if the student is an unemancipated minor.

(20 U.S.C. 1232h(b))

§ 98.5 Information and investigation office.

(a) The Secretary has designated an office to provide information about the requirements of section 439 of the Act, and to investigate, process, and review violations and complaints that may be filed concerning alleged violations of the provisions of the section.

(b) The following is the name and address of the office designated under paragraph (a) of this section: Family Educational Rights and Privacy Act Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

(20 U.S.C. 1231e-3(a)(1), 1232h)

§ 98.6 Reports and records.

(a) A recipient or contractor subject to this part shall keep records necessary to assure compliance with section 439 of the Act.

(b) The recipient or contractor shall give the Secretary access to the records kept under paragraph (a) of this section.

(c) The Secretary may require the recipient to submit reports containing information necessary to administer section 439 of the Act and the regulations in this part.

(20 U.S.C. 1221e-3(a)(1), 1232h)

§ 98.7 Filing a complaint.

(a) Any individual wishing to file a complaint regarding an alleged violation of rights accorded parents or students by section 439 of the Act shall submit the complaint in writing to the Office.

(b) The complaint filed under paragraph (a) of this section must contain specific allegations of fact giving reasonable cause to believe that a violation of either § 98.3 or § 98.4 exist.

(c) The Office investigates each complaint which the Office receives that meets the requirements of paragraph (b) of this section to determine whether the recipient or contractor failed to comply with the provisions of section 439 of the Act.

(U.S.C. 1221e-3(a)(1), 1232h)

§ 98.8 Notice of the complaint.

(a) If the Office receives a complaint that meets the requirements of §98.7(b), it provides written notification to the complainant and the recipient or contractor against which the violation has been alleged that the complaint has been received.

(b) The notice to the recipient or contractor under paragraph (a) of this section must—

(1) Include the substance of the alleged violation; and

(2) Inform the recipient or contractor that the Office will investigate the complaint and that the recipient may submit a written response to the complaint.

(20 U.S.C. 1221e-3(A)(1), 1232h)

§ 98.9 Investigation and findings.

(a) The Office may permit the parties to submit further written or oral arguments or information.

(b) Following its investigations, the Office provides to the complainant and recipient or contractor written notice of its findings and the basis for its findings.

(c) If the Office finds that the recipient or contractor has not complied with section 439 of the Act, the Office includes in its notice under paragraph (b) of this section—

(1) A statement of the specific steps that the Secretary recommends the recipient or contractor take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the recipient or contractor may comply voluntarily.

(U.S.C. 1221e-3(a)(1), 1232h)

§ 98.10 Enforcement of the findings.

(a) If the recipient or contractor does not comply during the period of time set under § 98.9(c), the Secretary may either—

(1) For a recipient—

(i) Issue a notice of intent to terminate funds under 34 CFR 78.21;

(ii) Issue a notice to withhold funds under 34 CFR 78.21, 200.94(b), or 298.45(b), depending upon the applicable program under which the notice is issued; or

(iii) Issue a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued; or

(2) For a contractor, direct the contracting officer to issue a termination for default decision.

(b) If, after an investigation under § 98.9, the Secretary finds that a recipient or contractor has complied voluntarily with section 439 of the Act, the Secretary provides the complainant and the recipient written notice of the decision and the basis for the decision.

(20 U.S.C. 1221e-3(a)(1), 1232h).

[FR Doc. 84-4289 Filed 2-15-84; 8:45 am]

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34 CFR Part 98

Student Rights in Research, Experimental Activities and Testing

AGENCY: Department of Education.

ACTION: Notice of Public Hearings.

SUMMARY: The Secretary gives notice of hearings to be conducted on proposed regulations that would implement section 439 of the General Education Provisions Act (GEPA) which pertains to student rights in research, experimental activities and testing. This notice provides the dates and locations of these hearings.

DATES: The dates for these hearings are: March 13, 16, 19, 21, 23, 27, 1984. The time for each of these hearings is 9:00 a.m. to 4:30 p.m. local time.

ADDRESSES: Written comments should be addressed to Monika Edwards Harrison, Special Advisor to the Deputy Under Secretary for Management, Room 3021, 400 Maryland Avenue, SW., Washington, D.C. 20202.

The locations and dates for the public hearings are:

Seattle, March 13, 1984—Federal Building, North Auditorium, 915 Second Avenue, Seattle, Washington.

Pittsburgh, March 16, 1984—William S. Moorehead Building, Room 2212-2218, 1000 Liberty Avenue, Pittsburgh, Pennsylvania.

Kansas City, March 19, 1984—American K.C. Hotel, Fairway Room, 1301 Wyandotte, Kansas City, Missouri.

Phoenix, March 20, 1984—Federal Building, 7th Floor, 230 North First Avenue, Phoenix, Arizona.

Concord, March 21, 1984—N.H. Highway Hotel, Pierce Ballroom, Fort Eddy Road, Concord, New Hampshire.

Orlando, March 23, 1984—Orange County Administration Office, School Board Meeting Room, 434 North Tampa Avenue, Orlando, Florida.

Washington, D.C. March 27, 1984—Regional Office Building #3, Main Auditorium, Seventh and D Streets, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Monika Edwards Harrison, (202) 245-9582.

For Information on Regional Hearings Contact:

Seattle—Mr. Sam Kerr, Department of Education, 2901 Third Avenue, Seattle, Washington 98121, (206) 442-0460.

Kansas City—Mr. Harry L. Kellman, Department of Education, 324 East 11th Street, Kansas City, Missouri 64106, (816) 374-2276.

Pittsburgh—Mr. Sonny Kane, Department of Education, 3535 Market Street, Philadelphia, Pennsylvania 19101, (215) 596-1001.

Concord—Ms. Evelyn Piazza, Department of Education, McCormack, P.O. and Court House Building, Boston, Massachusetts 02109, (617) 223-7500.

Phoenix—Dr. Albert Piltz, Department of Education, Room 205, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-4920.

Orlando—Dr. John Lovegrove, Department of Education, 101 Marietta Tower Building, Atlanta, Georgia 30323, (404) 221-2063.

Washington—Mr. Brent Marriott, Department of Education, 400 Maryland Avenue, SW., Room 2001, Washington, D.C. 20202 (202) 472-9444.

SUPPLEMENTARY INFORMATION: Subsection (a) of section 439 provides that instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be made available for inspection by the parents or guardians of the children included in programs or projects. In addition, no student may be required to submit to psychiatric examination, testing, or treatment in which the primary purpose is to reveal specific information about the student or his/her family. Prohibited areas include:

(1) Political affiliation;

(2) Mental and psychological problems potentially embarrassing to the student or his family;

(3) Sex behavior and attitudes;

(4) Illegal, anti-social, self-incriminating and demeaning behavior;

(5) Critical appraisals of other individuals with whom respondents have close family relationships;

(6) Legally recognized privileged and analogous relationships such as those of lawyers, physicians, and ministers; or

(7) Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

The Department is publishing a Notice of Proposed Rulemaking in this issue of the **Federal Register** that would further implement section 439 of GEPA. The Notice proposes procedures for enforcement of the provisions in section 439 and designates an office within the Department to investigate and review complaints of violations under the regulations. The Secretary has requested comments and recommendations on the proposed regulations. The Secretary is especially interested in receiving comments on whether the proposed procedures would provide sufficient flexibility to resolve complaints on a voluntary basis. The Secretary is also interested in comments on whether a recipient should be required to advise parents, guardians, or students of their opportunity to file complaints under the proposed complaint procedures and, if so, in what manner they should be informed.

The recordkeeping requirement that would be imposed by these proposed regulations has been stated in broad terms to leave the greatest possible discretion to educational agencies and institutions to determine what records to keep. An educational agency or institution should keep records sufficient to show compliance with the section. The Secretary is interested in receiving comments on the need for guidance regarding the kind of records an educational agency or institution should keep.

The Department, in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall

requirements to reduce regulatory burden, invites comments on whether there may be further opportunities to reduce any regulatory burdens found in the proposed regulations.

Persons wishing to present testimony at the hearing are requested to contact the appropriate contact person listed above in order to establish a scheduled time to speak. Those persons not planning to testify, but wishing to submit written comments, should send their comments to Monika Edwards Harrison at the address given above.

Dated: February 15, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-4630 Filed 2-21-84; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
February 22, 1984

Part IV

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies, Under the Natural Gas Policy Act of 1978; Notices

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Vol. 1064]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: February 16, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)—
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease.
Section 107–DP: 15,000 feet or deeper
107–GB Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS
ISSUED FEBRUARY 16, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
LOUISIANA OFFICE OF CONSERVATION									
-HAWTHORNE OIL & GAS CORPORATION				RECEIVED:	01/16/84	JA: LA			
8416584	82-1576	1701920881		102-4		KLUMPP #1	SOUTH LAKE CHARLES FI	545.0	LOUISIANA GAS SYS
8416583	82-1577	1701920911		102-4		KLUMPP #2	SOUTH LAKE CHARLES	548.0	LOUISIANA GAS SYS
8416582	82-1578	1701920972		102-4		KLUMPP #4	SOUTH LAKE CHARLES FI	365.0	LOUISIANA GAS SYS
-WEAVER EXPLORATION CO				RECEIVED:	01/16/84	JA: LA			
8416585	82-1236	1705500000		102-4		CHAPPUIS ESTATE #1	DUSON NORTH	900.0	SUGAR BOWL GAS CO
MONTANA BOARD OF OIL & GAS CONSERVATION									
-BEREN CORPORATION				RECEIVED:	01/16/84	JA: MT			
8416590	12-83-175	2503521451		108		IRA SURBER #5	LITTLE ROCK GAS	17.1	FOUREM CO
-CONSOLIDATED OIL & GAS INC				RECEIVED:	01/16/84	JA: MT			
8416602	1183153	2508321482		103		FORT GILBERT #5	FORT GILBERT	11.0	MGPC INC
8416604	1183154	2508321539		103		FORT GILBERT #7	FORT GILBERT	10.0	
8416603	1183156	2508321585		103		FORT GILBERT #9	FORT GILBERT	5.0	
-J BURNS BROWN				RECEIVED:	01/16/84	JA: MT			
8416598	7-83-116	2504121439		108		NICHOLS 1-28	BROWN COULEE	6.0	NORTHERN NATURAL
-MIDLANDS GAS CORPORATION				RECEIVED:	01/16/84	JA: MT			
8416589	12-83-171	2507121877		102-2		1441-2	BOWDOIN	20.0	K N ENERGY INC
-TORCH ENERGY CORP				RECEIVED:	01/16/84	JA: MT			
8416601	1183158	2508321646		103		FLARE ENERGY #4X-6 BORG	OTIS CREEK SOUTH	33.0	MGPC INC
-TRICENTROL UNITED STATES INC				RECEIVED:	01/16/84	JA: MT			
8416594	11-83-160	2500521405		108		BLACKWOOD 12-1	TIGER RIDGE	7.1	NORTHERN NATURAL
8416587	11-83-165	2504121060		108		ERHARD 27-6	BULLHOOK UNIT	6.3	NORTHERN NATURAL
8416599	11-83-167	2504121484		108		HILLBRANDT 34-6	BULLHOOK UNIT	3.2	NORTHERN NATURAL
8416592	12-83-174	2500522228		102-4		JACOBSON 1-2	SHERARD	743.4	NORTHERN NATURAL
8416600	1283173	2501521513		102-4		MCLEISH 17-9	SHERARD	4.0	NORTHERN NATURAL
8416591	12-83-176	2500522151		102-4		O'CONNELL 24-13	SHERARD	27.0	NORTHERN NATURAL
8416597	11-83-161	2500521424		108		RAMBERG 22-13	TIGER RIDGE	3.7	NORTHERN NATURAL
8416593	11-83-162	2500521012		108		ROBERTS 27-10	TIGER RIDGE	2.7	NORTHERN NATURAL
8416588	11-83-166	2504121042		108		STATE 20-11	BULLHOOK UNIT (TIGER	2.0	NORTHERN NATURAL
8416595	11-83-159	2500521943		108		STATE 36-9	TIGER RIDGE	3.5	NORTHERN NATURAL
8416596	11-83-163	2500521939		108		WILLIAMSON 12-16	SHERARD UNIT	1.5	NORTHERN NATURAL
8416586	11-83-164	2504121149		108		WODARZ 2-7	BULLHOOK UNIT (TIGER	4.4	NORTHERN NATURAL
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-AMAX PETROLEUM CORPORATION				RECEIVED:	01/16/84	JA: NM			
8416488		3003900000		108-PB		BISHOP #2	SOUTH BLANCO	18.0	EL PASO NATURAL G
-AMOCO PRODUCTION CO				RECEIVED:	01/16/84	JA: NM			
8416523		3004520374		108-PB		BRUINGTON GAS COM C #1	BASIN	0.0	EL PASO NATURAL G
8416492		3004524171		108		GALLEGOS CANYON UNIT #188E	BASIN DAKOTA	14.0	EL PASO NATURAL G
8416522		3004524171		108-PB		GALLEGOS CANYON UNIT #188E	BASIN	0.0	EL PASO NATURAL G
8416507		3004508694		108		STATE GAS COM "I" #1	BLANCO MESAVERDE	20.0	EL PASO NATURAL G
-CITIES SERVICE OIL & GAS CORP				RECEIVED:	01/16/84	JA: NM			
8416494		3002528325		103		BYERS B #1	NADINE BLINEBRY WEST	45.0	

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-EL PASO NATURAL GAS COMPANY				RECEIVED:	01/16/84	JA: NM			
8416524		3002524506		108-PB		RHODES STORAGE UNIT #20 WDRL	RHODES	0.0	EL PASO NATURAL G
-ENERGY RESERVES GROUP INC				RECEIVED:	01/16/84	JA: NM			
8416489		3004509636		108-PB		FARNSWORTH GAS COM B #1	BASIN DAKOTA	11.0	EL PASO NATURAL G
8416490		3004510077		108-PB		STATE GAS COM "BH" #1	BASIN DAKOTA	7.9	EL PASO NATURAL G
-EXXON CORPORATION				RECEIVED:	01/16/84	JA: NM			
8416498		3001524594		103		NEW MEXICO DP STATE #1	UNDESIG DELAWARE	29.0	PHILLIPS PETROLEU
-GULF OIL CORPORATION				RECEIVED:	01/16/84	JA: NM			
8416508		3002504747		108		ARNOTT-RAMSAY (NCT-C) #14	EUNICE MONUMENT	9.3	PHILLIPS PETROLEU
8416509		3001500294		108		ATOKA SAN ANDRES UNIT #127	ATOKA SAN ANDRES	1.0	PHILLIPS PETROLEU
8416511		3002520208		108		LEARCY MCBUFFINGTON #14	JUSTIS BLINEBRY	20.1	EL PASO NATURAL G
8416512		3002511208		108		PLAINS-KNIGHT #2	FOWLER UPPER YESO	17.2	EL PASO NATURAL G
8416510		3002511210		108		PLAINS-KNIGHT #3	FOWLER UPPER PADDOCK	5.4	EL PASO NATURAL G
-KERN CO				RECEIVED:	01/16/84	JA: NM			
8416499		3002500000		103		EUNICE COOPER #3	LANGLIE MATTIX	9.0	EL PASO NATURAL G
-MARATHON OIL COMPANY				RECEIVED:	01/16/84	JA: NM			
8416480		3002500000		108		SOUTH EUNICE SEVEN RIVERS QUEEN 503	SOUTH EUNICE	2.0	PHILLIPS PETROLEU
-MARBOB ENERGY CORPORATION				RECEIVED:	01/16/84	JA: NM			
8416485		3001523391		108		STATE U #2	ARTESIA QUEEN GRAYBUR	3.5	PHILLIPS PETROLEU
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	01/16/84	JA: NM			
8416491		3002500433		108		MEXCO-A #3	MALJAMAR GB/SA	1.0	EL PASO NATURAL G
-POGO PRODUCING COMPANY				RECEIVED:	01/16/84	JA: NM			
8416493		3001500000		103		LIGHTFOOT "COM" #1	MALAGA (STRAWN)	295.0	
-SONNEYS OIL FIELD SERVICES INC				RECEIVED:	01/16/84	JA: NM			
8416506		3002500000		108		SIMMONS #1	BISHOP CANYON SAN AND	6.4	PHILLIPS PETROLEU
-SOUTHLAND ROYALTY CO				RECEIVED:	01/16/84	JA: NM			
8416520		3004511821		108-PB		CULPEPPER MARTIN #16	BASIN	0.0	SOUTHERN UNION GA
8416518		3004507831		108-PB		MANGUM #5	BASIN	0.0	SOUTHERN UNION GA
8416519		3004508712		108-PB		MCGRATH A #1	BASIN	0.0	SOUTHERN UNION GA
8416521		3004523067		108-PB		PAGE #2A	BLANCO	0.0	SOUTHERN UNION GA
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	01/16/84	JA: NM			
8416486		3002500000		108		E W WALDEN #2	PENROSE SKELLY GRBG	6.0	GETTY OIL CO
-TEXACO INC				RECEIVED:	01/16/84	JA: NM			
8416525		3002500000	D	108		EUNICE MONUMENT UNIT #34	EUNICE MONUMENT GRAYB	0.7	PHILLIPS PETROLEU
8416526		3002500000	D	108		EUNICE MONUMENT UNIT #5	EUNICE MONUMENT GRAYB	0.8	PHILLIPS PETROLEU
8416527		3002500000	D	108		J R PHILLIPS #3	EUNICE MONUMENT GRAYB	12.0	WARREN PETROLEUM
8416528		3002500000	D	108		V M HENDERSON #5	PADDOCK	2.1	GETTY OIL CO
-WARREN PETROLEUM CO				RECEIVED:	01/16/84	JA: NM			
8416517		3002506015		108		BERTIE WHITMIRE #5	MONUMENT BLINEBRY	12.4	EL PASO NATURAL G
8416516		3002506621		108		HARRY LEONARD (NCT-E) #2	BLINEBRY	20.9	EL PASO NATURAL G
8416515		3002522329		108		LEA "OG" STATE #1	NORTH BAGLEY PENN	8.5	EL PASO NATURAL G
8416487		3002528323		103		LEA "TZ" STATE #3	SCHARB BONE SPRINGS	0.0	EL PASO NATURAL G
8416513		3002521620		108		W A RAMSAY (NCT-B) #4	PENROSE SKELLY	13.1	EL PASO NATURAL G
8416514		3002523324		108		W A RAMSAY (NCT-B) #5	PENROSE SKELLY	13.2	EL PASO NATURAL G
-YATES PETROLEUM CORPORATION				RECEIVED:	01/16/84	JA: NM			
8416505		3001524277		103		ALMOST TEXAS UNIT #1	UNDES WOLFCAMP	0.0	
8416500		3001524235		103		CHUMBLEY "XS" COM #1	WEST ATOKA MORROW	0.0	
8416502		3000520409		103		CONE STATE #2	TOM TOM S/A	0.0	
8416501		3002528150		103		DOVE "VK" ST #3	LAZY J PENN	0.0	WARREN PETROLEUM
8416481		3000562034		107-TF		GROOMS "XB" COM #1	PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
8416497		3000562053		103		IBIS "XU" ST #1	UNDES FOOR RANCH PRE-	0.0	TRANSWESTERN PIPE
8416482		3000561729		102-4		LONG ARROYO "OD" ST COM #2	UND SPRINGER BASIN MO	0.0	TRANSWESTERN PIPE
8416504		3001524575		103		MERCHANT "XT" COM #1	UND EAST EAGLE CREEK	0.0	
8416495		3001524619		103		PLATT "PA" #8	ATOKA YESO	0.0	TRANSWESTERN PIPE
8416483		3000562003		102-3		SACRA "SA" #10	PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
8416484		3000561960		102-2		SACRA "SA" COM #7-Z	PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
8416503		3000520914		103		UNION "XJ" ST #2	TOM TOM S/A/	0.0	
8416496		3004120688		103		WILCOX "TS" #2	TOMAHAWK S/A	0.0	
**********									
OKLAHOMA CORPORATION COMMISSION									
**********									
-AMAREX INC				RECEIVED:	01/16/84	JA: OK			
8416658 26871		3512920830		107-DP		ARMSTRONG #1-29	WEST BERLIN	150.0	
-ARCO OIL AND GAS COMPANY				RECEIVED:	01/16/84	JA: OK			
8416664 25559		3513722381		103		E VELMA W BLK HUMPHREYS SAND #108	SHO VEL TUM	7.3	GETTY OIL CO
8416665 25560		3513722380		103		E VELMA W BLK HUMPHREYS SAND #109	SHO VEL TUM	7.3	GETTY OIL CO
8416680 12142		3505100000		108-PB		THOMAS CHARLSON #6	CHICKASHA	12.0	ARKANSAS LOUISIAN
-BAMCO OIL & GAS INC				RECEIVED:	01/16/84	JA: OK			
8416630 25608		3507323167		103		POSPISIL #2	CANEY DEL	22.0	PANHANDLE EASTERN
-BEASLEY OIL CO				RECEIVED:	01/16/84	JA: OK			
8416660 25517		3507323829		103		PAUL KUNNEMAN #1	NORTHWEST OMEGA	125.0	PHILLIPS PETROLEU
-BILL O ANDRESS				RECEIVED:	01/16/84	JA: OK			
8416631 25654		3512121040		103		BOWLBY 4-3	N E CANADIAN	75.0	TRANSOK PIPE LINE
-BOGERT OIL CO				RECEIVED:	01/16/84	JA: OK			
8416614 25429		3501722586		103		MEYER 1-15	SOONER TREND	225.0	PHILLIPS PETROLEU
-BROOKS B B				RECEIVED:	01/16/84	JA: OK			
8416627 25897		3511124174		103		COKER #2	BRINTON POOL	11.0	PHILLIPS PETROLEU
-CHEW-COAST & SONS				RECEIVED:	01/16/84	JA: OK			
8416610 23640		3514723635		102-2		RUTH #1		20.0	DIAMOND S GAS SYS
-CHIEF WELL SERVICE INC				RECEIVED:	01/16/84	JA: OK			
8416640 25808		3503700000		103		P E LACEY #4-F	OLIVE	0.7	ARCO OIL & GAS CO
-CIMARRON PETROLEUM CORP				RECEIVED:	01/16/84	JA: OK			
8416634 23808		3500722468		102-2		ELSTON #181-3 CPC		144.0	PHILLIPS PETROLEU
-CITIES SERVICE OIL & GAS CORP				RECEIVED:	01/16/84	JA: OK			
8416697 25527		3504520301		108		WENTZ A #1	WEST VICI	2.0	PANHANDLE EASTERN
-CLAREMONT CORP				RECEIVED:	01/16/84	JA: OK			
8416616 25776		3508322321		103		CLARK #15-1		63.9	SUN EXPLORATION &
-COTTON PETROLEUM CORPORATION				RECEIVED:	01/16/84	JA: OK			
8416657 26865		3505121256		107-DP		ALFRED #1	COTTONWOOD S W	0.0	UNITED GAS PIPELI
-D & J OIL COMPANY				RECEIVED:	01/16/84	JA: OK			
8416692 23413		3505321065		102-4		LUCY 1-5	SOUTH MEDFORD	193.0	FARMLAND INDUSTRI
-DEM OPERATIONS				RECEIVED:	01/16/84	JA: OK			
8416670 25604		3505321239		103		DUVALL #2	SOUTHEAST SALT FORK F	50.0	FARMLAND INDUSTRI
-DONEGHY JAMES				RECEIVED:	01/16/84	JA: OK			
8416615 24649		3511124224		103		HUDSON 1-A	COALTON DISTRICT	36.0	PHILLIPS PETROLEU
-DRILLEX INC				RECEIVED:	01/16/84	JA: OK			
8416635 23820		3513122656		102-2		PENNER #1	PENNER	438.0	DIAMOND S GAS SYS
-ENSERCH EXPLORATION INC				RECEIVED:	01/16/84	JA: OK			
8416613 24262		3514900000		103		WALLIS-LOFTISS #1	BURNS FLAT	999.0	NATURAL GAS PIPEL
-FALCON PETROLEUM COMPANY				RECEIVED:	01/16/84	JA: OK			
8416690 23407		3500722390		102-4		ADELMAN #1	S W ELMWOOD	237.6	PHILLIPS PETROLEU
-GETTY OIL COMPANY				RECEIVED:	01/16/84	JA: OK			
8416688 24638		3501700000		107-PE		GOLD STOVER UNIT #1	WATONGA TREND	98.0	MUSTANG FUEL CORP
8416677 25651		3513900000		103		SCHLUCKEBIER #2	N E GUYMON	36.5	NORTHWEST CENTRAL

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-GULF OIL CORPORATION				RECEIVED:		01/16/84 JA: OK			
8416655	25893	3505121434		103		E L WOOD #4-29	LAVERTY (MARCHAND)	28.5	PHILLIPS PETROLEU
8416695	23451	3501121751		102-3		GULF SCOTT-BENEDA #1-29	UNDESIGNATED (MISSISS	257.0	
8416679	01633	3512920075		108-PB		HORRELL #1	TONKAWA	0.0	PANHANDLE EASTERN
-HARPER OIL COMPANY				RECEIVED:		01/16/84 JA: OK			
8416656	25894	3509322712		103		RUFUS PARKER #2	NORTH DANE	0.0	DELHI GAS PIPELIN
-HAWKINS OIL & GAS INC				RECEIVED:		01/16/84 JA: OK			
8416673	25619	3504520809		103		SALISBURY #1-16 L	N W CARMARGO	148.0	
8416672	25618	3513921723		103		STEINKUEHLER #1-15A	S SLEEPER	109.0	PHILLIPS PETROLEU
-IRA E RONGEY				RECEIVED:		01/16/84 JA: OK			
8416606	22403	3503724579		102-2		GRIFFIN #1	GLENPOOL	14.6	PHILLIPS PETROLEU
8416608	22405	3503723917		102-2		LEWIS #3	GLENPOOL	31.0	PHILLIPS PETROLEU
8416607	22404	3503724600		102-2		NOMA LEE #1	GLENPOOL	45.6	PHILLIPS PETROLEU
8416609	22406	3503724580		102-2		SHACKELFORD #1	GLENPOOL	7.3	PHILLIPS PETROLEU
-J H MCNEAL OIL OPERATIONS INC				RECEIVED:		01/16/84 JA: OK			
8416638	25498	3510322020		103		KENNETH EDGAR #2	GANSEL	24.0	ARCO OIL & GAS CO
-J M HUBER CORPORATION				RECEIVED:		01/16/84 JA: OK			
8416669	25590	3500722547		103		WALLACE "D" #1	LIGHT	200.0	PANHANDLE EASTERN
-KEITH F WALKER				RECEIVED:		01/16/84 JA: OK			
8416620	25788	3501922699		103		SEAY #2		27.4	AMINOIL USA INC
-LIBERTY EXPLORATION CO				RECEIVED:		01/16/84 JA: OK			
8416612	23841	3508322207		102-4		DUNLAP #1		0.0	CHAMPLIN PETROLEU
-LOCATORS OIL & GAS INC				RECEIVED:		01/16/84 JA: OK			
8416641	25810	3508320860		103		COFFIN #2	W LAURIE	22.8	EASON OIL CO
-LOUIS KAHAN				RECEIVED:		01/16/84 JA: OK			
8416647	25859	3513322113		103		ARHALOKOCHE	SOUTH CROMWELL POOL	492.0	WELLHEAD ENTERPRI
8416649	25861	3504723391		103		JENKINS	ENID NORTHEAST	109.0	GRACE PETROLEUM C
8416648	25860	3504723458		103		WUERFLEIN "A" #1	ENID NORTHEAST	33.0	GRACE PETROLEUM C
-M & L PETROLEUM CORP				RECEIVED:		01/16/84 JA: OK			
8416671	25609	3510321435		103		TERI #1 OTC PROD #103-71924		186.0	AMINOIL USA INC
-MAGIC CIRCLE ENERGY CORP				RECEIVED:		01/16/84 JA: OK			
8416661	25543	3501722478		103		MEYER #2	EAST OKARCHE	26.0	PHILLIPS PETROLEU
-MARATAN RESOURCES CORP				RECEIVED:		01/16/84 JA: OK			
8416689	24876	3501700000		103		RALPH #2		50.0	PHILLIPS PETROLEU
-MARATHON OIL COMPANY				RECEIVED:		01/16/84 JA: OK			
8416654	25892	3506521097		103		SCHOENHALS #1	GOODWIN SOUTH	60.0	
-MESONLERO OIL & GAS CO INC				RECEIVED:		01/16/84 JA: OK			
8416617	25676	3510120350		103		GERNER #1	BOYNTON	876.0	PHILLIPS PETROLEU
-MILESTONE PETROLEUM INC				RECEIVED:		01/16/84 JA: OK			
8416633	23789	3505320965		102-2		BENDA #1		25.0	FARMLAND INDUSTRI
-MOBIL OIL CORP				RECEIVED:		01/16/84 JA: OK			
8416682	17817	3504900000		108-PB		C LAMBERT #3	GOLDEN TREND	13.7	WARREN PETROLEUM
8416653	25891	3506120570		103		GLADYS HENDERSON UNIT #2	KINTA	0.0	OKLAHOMA NATURAL
8416624	25830	3513700000		108		J L MARTIN #13	SHOVELTUM	8.1	AMINOIL USA INC
8416643	25831	3503700000		108		SAM VANCE #2	CUSHING	1.2	ARCO OIL & GAS CO
8416644	25833	3509500000		108		WARD-HENDRICKS UNIT #2	AYLESWORTH	2.9	PIONEER GAS PRODU
-OKLAHOMA PETROLEUM MANAGEMENT CORP				RECEIVED:		01/16/84 JA: OK			
8416626	25845	3510721133		103		SEXTON #1		0.0	GOLDEN ARROW GAS
8416646	25844	3510721474		103		WHITESIDES #1		0.0	SWAB CORP
-OTEX ENERGY INC				RECEIVED:		01/16/84 JA: OK			
8416678	26722	3501521323		107-DP		SMITH #1-36 015-82417	W/C	1030.4	CALICHE PIPELINE
-PHILLIPS PETROLEUM COMPANY				RECEIVED:		01/16/84 JA: OK			
8416605	22384	3501721828		108-ER		KROUTIL A #1	SOONER TREND	4.6	
8416632	23677	3503121069		102-4		STEPHENS B #1		0.0	
8416659	19263	3504700000		108-ER		SWART "A" #1	SOONER TREND	13.0	PANHANDLE EASTERN
-PRODUCERS 88 OIL CORP				RECEIVED:		01/16/84 JA: OK			
8416666	25578	3510721677		103		GLEN NORTON - M#2	SOUTH CLEARVIEW	100.0	PHILLIPS PETROLEU
-RED EAGLE OIL CO				RECEIVED:		01/16/84 JA: OK			
8416619	25768	3509322677		103		KARBER #1	N W OKEENE	100.0	PIONEER GAS PRODU
8416618	25767	3501121817		103		SHIRLEY #1	N W OKEENE	365.0	PIONEER GAS PRODU
-REGENCY EXPLORATION INC				RECEIVED:		01/16/84 JA: OK			
8416693	23433	3505321037		102-2		BETTY ANN LEFORCE #1-14		0.0	UNION TEXAS PETRO
-SAMEDAN OIL CORPORATION				RECEIVED:		01/16/84 JA: OK			
8416652	25886	3508720546		103		WILLIAMS #1	S FLINT	40.0	SUN EXPLORATION &
-SANTA FE-ANDOVER OIL CO				RECEIVED:		01/16/84 JA: OK			
8416629	25242	3501722184		103		BOMHOFF #20-2		150.0	DELHI GAS PIPELIN
-SCC DEVELOPMENT CO INC				RECEIVED:		01/16/84 JA: OK			
8416663	25552	3503724904		103		CRAIG #1	GLENPOOL	0.0	PHILLIPS PETROLEU
-SHELL OIL CO				RECEIVED:		01/16/84 JA: OK			
8416694	23449	3505121387		102-4		HILL #1-23	TABLER N E	133.2	
-SKI ENERGY				RECEIVED:		01/16/84 JA: OK			
8416675	25627	3514322641		103		SKI - A6 - 9 #1		0.0	PHILLIPS PETROLEU
-SOUTHLAND ROYALTY CO				RECEIVED:		01/16/84 JA: OK			
8416685	21185	3515321170		108-PB		COX #1-13	PERSIMMON CREEK	18.0	TENNESSEE GAS PIP
8416681	13836	3513921240		108-PB		CRAIG #1-6	CAPLE	16.0	NORTHERN NATURAL
8416684	19495	3513900377		108-PB		ELMORE #1	EAST HOOKER	21.5	NORTHERN NATURAL
8416696	23455	3515121083		108-PB		RORING #2-29	FREEDOM 76	10.0	PANHANDLE EASTERN
-SOUTHPORT EXPLORATION INC				RECEIVED:		01/16/84 JA: OK			
8416628	25908	3505121450		103		KAHLE #2-14	NINNEKAH	19.0	ARKANSAS LOUISIAN
-SPECTRA ENERGY CORP				RECEIVED:		01/16/84 JA: OK			
8416683	18525	3502520528		102-4 103		HAMPTON #1	KEYS GAS AREA	0.0	TRANSWESTERN PIPE
-SPRING TIDE PETROLEUM INC				RECEIVED:		01/16/84 JA: OK			
8416650	25865	3511123538		108		KOERNER "A" LEASE WELL #2	NORTH BEGGS	25.6	PHILLIPS PETROLEU
8416651	25866	3511123414		108		KOERNER LEASE WELL #1	NORTH BEGGS	69.4	PHILLIPS PETROLEU
-STANTON ENERGY INC				RECEIVED:		01/16/84 JA: OK			
8416674	25623	3514322423		103		JOSH #1	KEYSTONE	25.0	COLORADO GAS COMP
8416691	23409	3514322439		102-4 103		LUVENA #2	KEYSTONE	25.0	COLORADO GAS COMP
-TEXACO INC				RECEIVED:		01/16/84 JA: OK			
8416686	22971	3505321062		102-2		C LEFORCE #1	VICAR NORTH POOL	53.9	NORTHWEST CENTRAL
8416622	25807	3513921775		103		E L ADDINGTON #3	EVA N W	4.9	
8416621	25806	3502520582		103		RUTH BRYAN UNIT #3	MIDWELL	3.3	
-TEXINIA CORP				RECEIVED:		01/16/84 JA: OK			
8416667	25587	3500722473		103		WEST ELMWOOD WATERFLOOD UNIT 20-2	WEST ELMWOOD	10.2	PHILLIPS PETROLEU
-THE WIL-MC OIL CORP				RECEIVED:		01/16/84 JA: OK			
8416625	25842	3505321083		103		BREEN #1	EAST WAKITA	6.0	SUN EXPLORATION &
8416668	25589	3505321212		103		DORIS #1	NORTH DEER CREEK	17.0	
-TXO PRODUCTION CORP				RECEIVED:		01/16/84 JA: OK			
8416687	23381	3507920256		102-4		ROBERT MCDONALD #1		0.0	DELHI GAS PIPELIN
-UNIT DRILLING & EXPLORATION CO				RECEIVED:		01/16/84 JA: OK			
8416662	25550	3505121388		103		SNEDEKER #1-11	EAST CEMENT	75.0	
-VAUGHAN DELOY				RECEIVED:		01/16/84 JA: OK			
8416637	25225	3510100000		108		DULLE #1	BALD HILL	0.0	PHILLIPS PETROLEU
8416636	25224	3510100000		108		NEWTON 2-C	BALD HILL	409.0	PHILLIPS PETROLEU
-VAUGHN GOOD				RECEIVED:		01/16/84 JA: OK			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8416642	25818	3508100000		103		LANE #1	LINCOLN	44.0	
8416623	25819	3505300000		103		WILKENS #2-15	SOONER TREND	0.0	UNION TEXAS PETRO
-VIERSEN & COCHRAN				RECEIVED:	01/16/84	JA: OK			
8416676	25631	3501121849		103		HEIRS OF YELLOW WOMAN #2-31	WATONGA TREND	54.0	PHILLIPS PETROLEU
-WOODS PETROLEUM CORPORATION				RECEIVED:	01/16/84	JA: OK			
8416611	23835	3512920959		102-2		ANDERSON #8-1	SW LEEDEY	558.0	DELHI GAS PIPELIN
-WORLDWIDE ENERGY CORPORATION				RECEIVED:	01/16/84	JA: OK			
8416645	25838	3500700000		108		KULOW #1	DOMBEY	8.0	K N ENERGY INC
-101 ENERGY CORP				RECEIVED:	01/16/84	JA: OK			
8416639	25744	3505321191		103		WILKENS 15-2	S POND CREEK	100.0	UNION TEXAS PETRO
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-ALLEGHENY LAND & MINERAL COMPANY				RECEIVED:	01/16/84	JA: WV			
8416559		4701703146		103		A-1149	SOUTHWEST DISTRICT	0.0	CONSOLIDATED GAS
-ASHLAND EXPLORATION INC				RECEIVED:	01/16/84	JA: WV			
8416579		4708100575		107-TF		BEDFORD LAND CO #19 - 092651	PAINT CREEK	64.0	COLUMBIA GAS TRAN
8416581		4701900482		107-TF		CHRISTIAN COLLIERY #4 - 094261	PAINT CREEK	31.0	COLUMBIA GAS TRAN
8416576		4701900479		107-TF		EASTERN GAS & FUEL #75 - 092991	PAINT CREEK	10.0	COLUMBIA GAS TRAN
8416580		4701900490		107-TF		RIVERSIDE PARK INC #3 - 094561	LOUP CREEK	28.0	COLUMBIA GAS TRAN
-CALTEX MINERALS CORP				RECEIVED:	01/16/84	JA: WV			
8416529		4701702556		103		FLORA FREEMAN NO 1	UNION	24.3	COLUMBIA GAS TRAN
-CHESTERFIELD ENERGY CORP				RECEIVED:	01/16/84	JA: WV			
8416564		4709702254		108		GOODEN WELL #1 47-097-2254	WASHINGTON	0.0	COLUMBIA GAS TRAN
-COLUMBIA GAS TRANSMISSION CORP				RECEIVED:	01/16/84	JA: WV			
8416530		4703903638		102-4		GEORGES CK LAND & MIN CO 820520	INDIAN CREEK	57.0	COLUMBIA GAS TRAN
8416531		4703903631		102-4		KANAWHA HOCKING COAL & COKE 820349	INDIAN CK	40.0	COLUMBIA GAS TRAN
-HAUGHT INC				RECEIVED:	01/16/84	JA: WV			
8416567		4708504518		103		J F DEEM H-917	GRANT DISTRICT	0.0	CONSOLIDATED GAS
-HECK OIL CO INC				RECEIVED:	01/16/84	JA: WV			
8416571		4708506041		103		JOE GOFF #1	UNION DISTRICT	0.0	CARNEGIE NATURAL
-J & J ENTERPRISES INC				RECEIVED:	01/16/84	JA: WV			
8416574		4703302447		103		B-403	COAL	0.0	CONSOLIDATED GAS
8416565		4709702333		103		B-431	MEADE	0.0	COLUMBIA GAS TRAN
8416561		4708505998		103		J-733	CLAY	0.0	CONSOLIDATED GAS
8416560		4709702533		103		J-739	UNION	0.0	EASTERN AMERICAN
-J F DEEM OIL & GAS				RECEIVED:	01/16/84	JA: WV			
8416563		4708506352		103		HARRIS #1	GRANT	0.0	CONSOLIDATED GAS
-JACKSON DEVELOPMENT CO INC				RECEIVED:	01/16/84	JA: WV			
8416577		4703903949		103		MARGARET Y DICKENSON #31	MALDEN	91.3	CONSOLIDATED GAS
-KEPCO INC				RECEIVED:	01/16/84	JA: WV			
8416562		4708506162		103		B B HARPER #3 (WK-212)	CLAY DISTRICT	27.0	TENNESSEE GAS PIP
8416573		4709702537		103		JOHN R SHOMO #1 (WK-231)	WARREN DISTRICT	22.0	TENNESSEE GAS PIP
8416569		4708506257		103		R T ROBERTSON #3 (WK-213)	CLAY DISTRICT	35.0	TENNESSEE GAS PIP
8416568		4708506431		103		R T ROBERTSON #4 (WK-96)	CLAY DISTRICT	35.0	TENNESSEE GAS PIP
-L & M PETROLEUM INC				RECEIVED:	01/16/84	JA: WV			
8416575		4707301680		103		HAMMETT #3	JEFFERSON	10.0	CONSOLIDATED GAS
-MID-AMERICA PETROLEUM INC				RECEIVED:	01/16/84	JA: WV			
8416570		4708506403		103		WEST PALM #2	UNION DISTRICT	0.0	CARNEGIE NATURAL
-PEAKE OPERATING CO				RECEIVED:	01/16/84	JA: WV			
8416539		4710900877		103		BOND 1-A	OCEANA	5.0	ROARING FORK GAS
8416557		4703903853		103		ENNIS 1-A	JEFFERSON	5.0	COLUMBIA GAS TRAN
8416533		4710900903		107-TF		GEORGIA PACIFIC #2-AGP	(OCEANA DISTRICT)	5.0	
8416532		4710900885		107-TF		GEORGIA-PACIFIC #3-AGP	(OCEANA DISTRICT)	5.0	CONSOLIDATED GAS
8416547		4703903895		103		JOHNSON 1A	JEFFERSON	5.0	COLUMBIA GAS TRAN
8416538		4708100601		107-TF		JONES & GIBSON #5-AJ	(TRAP HILL DISTRICT)	5.0	
8416536		4708100618		107-TF		JONES & GIBSON #6-AJ	(TRAP HILL DISTRICT)	5.0	
8416535		4708100621		107-TF		JONES & GIBSON #8-AJ	(TRAP HILL DISTRICT)	5.0	
8416541		4708100576		103		JONES & GIBSON 2AJ	TRAP HILL	5.0	COLUMBIA GAS TRAN
8416540		4708100577		103		JONES & GIBSON 3 AJ	TRAP HILL	5.0	COLUMBIA GAS TRAN
8416543		4704302549		103		KING 1A	WASHINGTON	5.0	COLUMBIA GAS TRAN
8416545		4703903905		103		MARTIN 1A	JEFFERSON	5.0	COLUMBIA GAS TRAN
8416544		4703903906		103		MARTIN 2-A	JEFFERSON	5.0	COLUMBIA GAS TRAN
8416553		4703903864		103		MORRIS 1A	WASHINGTON	5.0	COLUMBIA GAS TRAN
8416537		4708100614		107-TF		NEW RIVER #14-AR	(TOWN DISTRICT)	5.0	
8416550		4703903887		103		PAULEY 1A	WASHINGTON	5.0	COLUMBIA GAS TRAN
8416556		4703903851		103		PEARSON 1A	JEFFERSON	5.0	
8416558		4701900465		103		PRICE HEIRS 1-BR	PLATEAU	5.0	
8416554		4703903859		103		ROGERS 1A	JEFFERSON	5.0	COLUMBIA GAS TRAN
8416549		4703903893		103		ROGERS 3A	JEFFERSON	5.0	COLUMBIA GAS TRAN
8416542		4705901032		103		SIGNIAGO #1-A	STAFFORD	5.0	COLUMBIA GAS TRAN
8416534		4710900895		107-TF		SMITH #1-A	(OCEANA DISTRICT)	5.0	
8416555		4703903855		103		STEELE 1A	JEFFERSON	5.0	COLUMBIA GAS TRAN
8416548		4703903894		103		STEELE 2A	JEFFERSON	5.0	COLUMBIA GAS TRAN
8416546		4703903892		103		WISMAN 1A	WASHINGTON	5.0	
8416552		4703903881		103		WOOD 1-A	WASHINGTON	5.0	
8416551		4703903882		103		YODER 1A	WASHINGTON	5.0	COLUMBIA GAS TRAN
-PRIOR EA VERNE				RECEIVED:	01/16/84	JA: WV			
8416566		4708505989		103		JOE GOFF #1 (6.327 ACRES	UNION DISTRICT	0.0	CARNEGIE NATURAL
-RARE EARTH ENERGY INC				RECEIVED:	01/16/84	JA: WV			
8416572		4708506458		103		HAZELBAKER #1	CLAY DISTRICT	0.0	CONSUMER GAS UTIL
-STERLING DRILLING AND PROD CO INC				RECEIVED	01/16/84	JA: WV			
8416578		4700501400		102-4		APPALACHIAN POWER CO #673-REV	SCOTT DISTRICT	29.5	

[FR Doc. 84-4683 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-C

[Vol. 1065]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: February 16, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104, Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubit feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Section 108: Stripper will
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
ISSUED FEBRUARY 16, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
**** LOUISIANA OFFICE OF CONSERVATION ****									
-MCCORMICK OPERATING CO				RECEIVED:	01/18/84	JA: LA			
8416698	83-1610	1711321218		102-4		FRED STOVALL #10	LIVE OAK 6116	300.0	LOUISIANA RESOURC
-WILLIAMS EXPLORATION COMPANY				RECEIVED:	01/18/84	JA: LA			
8416699	83-1612	1702321464		103		J W MECOM FEE #10	SECOND BAYOU	1241.0	LOUISIANA RESOURC
**** MICHIGAN DEPARTMENT OF NATURAL RESOURCES ****									
-AMOCO PRODUCTION CO				RECEIVED:	01/19/84	JA: MI			
8416806	C#94618	2105536244		102-4		LAW UNIT #1-B-31	UNION 31-A-26N-9W	460.0	CONSUMERS POWER C
8416807	C#94618	2105536037		102-4		STATE WHITEWATER "J" 4-20	WHITEWATER 20-27N-9W	16.4	CONSUMERS POWER C
**** NORTH DAKOTA INDUSTRIAL COMMISSION ****									
-AMERADA HESS CORPORATION				RECEIVED:	01/17/84	JA: ND			
8416748	891	3305301711		102-3		L WHEELER 10-23	BLUE BUTTES	61.0	MONTANA DAKOTA UT
-CENTURY OIL & GAS CORP				RECEIVED:	01/17/84	JA: ND			
8416751	894	3301301004		103		SCHULTZ #14-6	FLAXTON	45.0	CITIES SERVICE OI
-GULF OIL CORPORATION				RECEIVED:	01/17/84	JA: ND			
8416750	893	3302500359		102-2		KULISH 2-30-2C	LITTLE KNIFE	9.6	
8416749	892	3305301713		102-2		STATE ZABOLOTNY 2-36-3C	LITTLE KNIFE (MISSION	0.0	MONTANA DAKOTA UT
-TOM BROWN INC				RECEIVED:	01/17/84	JA: ND			
8416747	889	3305301674		102-2		NOVAK 25-11	ELK	73.0	PHILLIPS PETROLEU
-UNIVERSAL RESOURCES CORPORATION				RECEIVED:	01/17/84	JA: ND			
8416746	890	3305301729		102-4		ERNEST #1-29	KEENE	0.0	AMINOIL USA INC
**** NEW MEXICO DEPARTMENT OF ENERGY & MINERALS ****									
-AMOCO PRODUCTION CO				RECEIVED:	01/19/84	JA: NM			
8416818		3004525670		103		ABRAMS "L" #1	ARMENTA - GALLUP	9.0	NORTHWEST PIPELIN
8416815		3004525671		103		ARMENTA COM "F" #1	ARMENTA - GALLUP	15.0	
8416820		3004525559		103		BRUINGTON GAS COM "C" / TRUE #1E	BASIN - DAKOTA	29.0	NORTHWEST PIPELIN
8416816		3004525672		103		POLLOCK COM "D" #1	ARMENTA - GALLUP	14.0	NO PURCHASER
8416814		3004525743		103		POLLOCK COM "E" #1	ARMENTA - GALLUP	0.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	01/19/84	JA: NM			
8416824		3004521098		108-PB		ATLANTIC D COM L #13 PC	BLANCO	0.0	EL PASO NATURAL G
8416823		3003920487		108-PB		SAN JUAN 27-5 UNIT #135	TAPACITO	0.0	EL PASO NATURAL G
8416822		3003906979		108-PB		SAN JUAN 27-5 UNIT #41 PC & MV	TAPACITO & BLANCO	0.0	EL PASO NATURAL G
-ENERGY RESERVES GROUP INC				RECEIVED:	01/19/84	JA: NM			
8416825		3004509636		108-PB		FARNSWORTH GAS COM B #1	BASIN DAKOTA	10.6	EL PASO NATURAL G
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	01/19/84	JA: NM			
8416817		3003923240		103		W O HUGHES #6	WEST LINDRITH GALLUP	93.8	NORTHWEST PIPELIN
-TENNECO OIL COMPANY				RECEIVED:	01/19/84	JA: NM			
8416819		3004525656		103		VALDEZ 2	UNDESIGNATED GALLUP	63.0	EL PASO NATURAL G
-TEXACO INC				RECEIVED:	01/19/84	JA: NM			
8416813		3002528385		103		NEW MEXICO "AN" STATE #12	SAUNDERS (PERMO UPPER	95.3	WARREN PETROLEUM
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	01/19/84	JA: NM			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8416821		3002528292		103		HUGH #15	WANTZ ABO	0.0	EL PASO NATURAL G
********** OHIO DEPARTMENT OF NATURAL RESOURCES **********									
-ALTHEIRS OIL INC				RECEIVED: 01/19/84		JA: OH			
8416833		3410522772		103	107-TF	FOWLER #4	RUTLAND TWA	5.0	COLUMBIA GAS TRAN
-ARAPAHO VENTURES OF NEW YORK INC				RECEIVED: 01/19/84		JA: OH			
8416834		3416725968		107-TF		GOLDIE HAAS #6	WILDCAT	0.1	COLUMBIA GAS TRAN
8416835		3416726095		107-TF		UNION CARBIDE #1	WILDCAT	0.1	COLUMBIA GAS TRAN
8416836		3416726096		107-TF		UNION CARBIDE #2	WILDCAT	0.1	COLUMBIA GAS TRAN
-ATLAS ENERGY GROUP INC				RECEIVED: 01/19/84		JA: OH			
8416838		3413323106		103	107-TF	TONSING UNIT #1	DEERFIELD	0.0	REPUBLIC STEEL CO
8416837		3413322920		103	107-TF	ZINZ #2	DEERFIELD	0.0	REPUBLIC STEEL CO
-B & B ENTERPRISES				RECEIVED: 01/19/84		JA: OH			
8416839		3411523284		107-TF		LYLE APPERSON #1	MCCONNELLSVILLE	40.0	
-BELDEN & BLAKE & CO 83				RECEIVED: 01/19/84		JA: OH			
8416841		3401921671		103	107-TF	M & E MYERS #2 - 341356	BROWN	36.5	
8416840		3401921562		103	107-TF	M PONTONES COMM #2	BROWN	0.0	
8416842		3413323027		103	107-TF	T & N INVESTMENT CO COMM #1-341322	AURORA	0.0	
-BERRESFORD ENTERPRISES INC				RECEIVED: 01/19/84		JA: OH			
8416843		3411523119		107-DP		RALPH ROCKER #1	CENTER	0.0	
-BLAUSER WELL SERVICE INC				RECEIVED: 01/19/84		JA: OH			
8416844		3400922001		107-TF		CURTIS A RECTOR #1	CATHAGE	6.0	COLUMBIA GAS TRAN
8416845		3416725131		107-TF		DAVID D DUNBAR #4	FAIRFIELD	0.5	COLUMBIA GAS TRAN
-COASTAL PETROLEUM CORP				RECEIVED: 01/19/84		JA: OH			
8416851		3410323561		107-TF		BROOKSIDE #15-A	MONTVILLE	9.0	EAST OHIO GAS CO
8416847		3410323319	D	107-TF		BROOKSIDE #4	MONTVILLE	9.0	EAST OHIO GAS CO
8416846		3410323318	D	107-TF		BROOKSIDE #6	MONTVILLE	9.0	EAST OHIO GAS CO
8416848		3410323369	D	107-TF		BROOKSIDE #7	MONTVILLE	9.0	EAST OHIO GAS CO
8416849		3410323395		107-TF		GRINDLE/THOMPSON #1	SHARON	9.0	EAST OHIO GAS CO
8416850		3410323526		107-TF		SHUMATE #2	SHARON	9.0	EAST OHIO GAS CO
-EAGLE MOUNTAIN ENERGY CORP				RECEIVED: 01/19/84		JA: OH			
8416852		3411523283		103	107-TF	DELMAR WILSON #1	MORGAN	45.0	PANHANDLE EASTERN
8416853		3411523288		103	107-TF	SELLS-RIBBLE UNIT #1	CENTER	45.0	PANHANDLE EASTERN
-ENERGY DEVELOPMENT CORP				RECEIVED: 01/19/84		JA: OH			
8416855		3400722327		107-TF		GALE #1	CHERRY VALLEY	16.0	
8416854		3400722255		103	107-TF	PAVLECHKO UNIT #1	CHERRY VALLEY	12.0	
8416856		3405520162		107-RT		STANLEY B SMITH #1	PARKMAN	9.0	COLUMBIA GAS TRAN
-ENINUN INC				RECEIVED: 01/19/84		JA: OH			
8416857		3411926403		103	107-TF	BRAILER #1	LICKING	20.0	NATIONAL GAS & OI
-ENTERPRISE ENERGY CORP				RECEIVED: 01/19/84		JA: OH			
8416858		3416727495		107-TF		DOAK #1	WATERFORD	27.3	
-FUTURE ENERGY CORPORATION				RECEIVED: 01/19/84		JA: OH			
8416859		3411523261		103	107-TF	PIERCE #2	MALTA	30.0	
-GASEARCH INC				RECEIVED: 01/19/84		JA: OH			
8416861		3415522373		103	107-TF	SNYDER #1	MESOPOTAMIA	20.0	GAS OHIO TRANSPOR
8416860		3415522372		103	107-TF	SNYDER #2	MESOPOTAMIA	20.0	GAS OHIO TRANSPOR
8416862		3415522430		103	107-TF	SNYDER #3	MESOPOTAMIA	20.0	GAS OHIO TRANSPOR
-GENERAL ELECTRIC CO				RECEIVED: 01/19/84		JA: OH			
8416863		3415522354		103	107-TF	PRESBYTERY OF CLEVELAND #3	MESOPOTAMIA	20.0	EAST OHIO GAS CO
-GEO ENERGY INC				RECEIVED: 01/19/84		JA: OH			
8416864		3410322606		107-TF		TOLSMA #12-3-1	LIVERPOOL	1.0	COLUMBIA GAS TRAN
-GILBERT OIL CO				RECEIVED: 01/19/84		JA: OH			
8416867		3413322756		102-4		DODLEY #1	SUFFIELD	11.0	(DOEHLER-JARVIS)
8416865		3413322754		102-4		JACKSON #1	SUFFIELD	10.0	(DOEHLER-JARVIS)
8416866		3413322755		102-4		JACKSON #2	SUFFIELD	10.0	(DOEHLER-JARVIS)
-GREEN ENERGY				RECEIVED: 01/19/84		JA: OH			
8416868		3409321228		107-TF		BARTTER #10	COLUMBIA	10.0	COLUMBIA GAS TRAN
-GREENLAND PETROLEUM CO				RECEIVED: 01/19/84		JA: OH			
8416869		3412726022		107-TF		JONES COAL CO #8	COAL	20.0	FORACKER GAS CO I
-H I SMITH OIL & GAS INC				RECEIVED: 01/19/84		JA: OH			
8416870		3407521815		108		WEAVER-MCKEE #1		2.0	COLUMBIA GAS TRAN
8416871		3407523056		108		WEAVER-MCKEE #2		7.0	COLUMBIA GAS TRAN
-HYDROCARBON RESOURCES INC				RECEIVED: 01/19/84		JA: OH			
8416872		3410323477		107-TF		LEIBY #5	GRANGER	18.0	
-INTEGRATED PETROLEUM COMPANY INC				RECEIVED: 01/19/84		JA: OH			
8416873		3413321822		103	107-RT	PORTAGE BEAGLE CLUB #2	DEERFIELD	200.0	AMERICAN ENERGY S
-K S T OIL & GAS CO INC				RECEIVED: 01/19/84		JA: OH			
8416874		3415321453		103	107-TF	K S T FARMS #1	STOW	40.0	
-KEN-TRAK VII				RECEIVED: 01/19/84		JA: OH			
8416875		3410522532		107-TF		J LIGHTFOOT #4	LOWER MISSISSIPPIAN	0.0	
-KEN-TRAK XII				RECEIVED: 01/19/84		JA: OH			
8416876		3410522782		107-TF		R COMPTON #1	LOWER MISSISSIPPIAN	0.0	
-L & M EXPLORATION INC				RECEIVED: 01/19/84		JA: OH			
8416877		3401921101		108		HADORN #1		10.0	BONANZA GAS LINE
8416878		3401921159		108		PRICE #1		10.0	BONANZA GAS LINE
8416879		3401921250		108		WATSON #3		10.0	BONANZA GAS LINE
-LAKE REGION OIL INC				RECEIVED: 01/19/84		JA: OH			
8416880		3402920990		103	107-TF	THOMAS RILL #1	BUTLER	10.0	YANKEE RESOURCES
-LANDPROVEST INC				RECEIVED: 01/19/84		JA: OH			
8416881		3405923501		107-TF		OSTRANDER #1-83	BLOOMFIELD	25.0	
-LANGASCO DRILLING CO				RECEIVED: 01/19/84		JA: OH			
8416882		3402920969		107-TF		LUDWIG WHITELEATHER #2	WEST	45.0	YANKEE RESOURCES
-LARRY H WRIGHT INC				RECEIVED: 01/19/84		JA: OH			
8416883		3407523707		103	107-TF	EMANUEL HERSHBERGER #2	PAINT	10.0	COLUMBIA GAS TRAN
-LIBERTY OIL & GAS CORP				RECEIVED: 01/19/84		JA: OH			
8416884		3410521819		107-DV		ELMER KAYLOR #1	ORANGE	18.0	COLUMBIA GAS TRAN
8416885		3410522714		107-DV		IHLA FAE KIMES #1	ORANGE	18.0	COLUMBIA GAS TRAN
8416886		3410522715		107-DV		RICHARD P BUCKLEY #1	ORANGE	18.0	COLUMBIA GAS TRAN
-LOMAK PETROLEUM INC				RECEIVED: 01/19/84		JA: OH			
8416892		3405520517		103	107-TF	A DALE #2	CLARIDON	24.0	
8416893		3405525340		103	107-TF	A DALE #5	CLARIDON	24.0	
8416890		3405520468		103	107-TF	A GOLLWITZER #1	CLARIDON	24.0	
8416889		3405520399		103	107-TF	C INEMAN #1	CLARIDON	24.0	
8416888		3405520532		103	107-TF	F DIVELY #1	CLARIDON	24.0	
8416891		3405520470		103	107-TF	L MUNSON #1	CLARIDON	24.0	
8416887		3405520526		103	107-TF	L NONNAMAKER UNIT #1	CLARIDON	24.0	
-M B OPERATING CO INC				RECEIVED: 01/19/84		JA: OH			
8416894		3415123885		103	107-TF	CASTLE NURSING HOMES #2	BETHLEHEM	54.8	EAST OHIO GAS CO
8416895		3415123900		103	107-TF	V CRAMER UNIT #1	BETHLEHEM	43.8	EAST OHIO GAS CO
-NOBLE OIL CORP				RECEIVED: 01/19/84		JA: OH			
8416899		3413323077		107-TF		CORBETT #1	PARIS	20.0	GENERAL ELECTRIC
8416896		3400722284		107-TF		FETTERS #3	NEW LYME	20.0	EAST OHIO GAS CO
8416898		3413322975		107-TF		THOMAS-FAGERT #15	PALMYRA	20.0	GENERAL ELECTRIC

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8416897		3413322728		107-TF		WEISEL #3	PALMYRA	20.0	GENERAL ELECTRIC
-OXFORD OIL CO				RECEIVED:	01/19/84	JA: OH			
8416914		3411926661		107-TF		MURPHY FARM #3	PERRY	10.0	
-PETRO EVALUATION SERVICES INC				RECEIVED:	01/19/84	JA: OH			
8416900		3408520486		103	107-TF	SQUARE #1	PERRY	35.0	
-PINETOP ESTATES				RECEIVED:	01/19/84	JA: OH			
8416901		3415321356		103	107-TF	ALDEN #1	NORTHAMPTON	0.0	EAST OHIO GAS CO
-POI ENERGY INC				RECEIVED:	01/19/84	JA: OH			
8416903		3400722335		103	107-TF	BOGDAN #CG-2	ROME	27.0	
8416902		3400722069		103	107-TF	R SIRRINE #1	ROME	35.0	EAST OHIO GAS CO
-QUAKER STATE OIL REFINING CORP				RECEIVED:	01/19/84	JA: OH			
8416907		3411923099		107-RT		KING UNIT #1	BLUE ROCK	29.2	NATIONAL GAS & OI
8416904		3407322821		103	107-TF	SUNDAY CREEK COAL CO #76	WARD	4.4	COLUMBIA GAS TRAN
8416905		3407322877		103	107-TF	SUNDAY CREEK COAL CO #84	WARD	18.3	COLUMBIA GAS TRAN
8416906		3407322878		103	107-TF	SUNDAY CREEK COAL CO #89	WARD	25.6	COLUMBIA GAS TRAN
-R H HUTCHESON				RECEIVED:	01/19/84	JA: OH			
8416908		3415723712		107-TF		TWILIGHT MINING #2	FRANKLIN	60.0	EAST OHIO GAS CO
8416909		3415723713		107-TF		TWILIGHT MINING #3	FRANKLIN	60.0	EAST OHIO GAS CO
-RCH CO				RECEIVED:	01/19/84	JA: OH			
8416910		3403521193		107-TF		HUGE HENDRICKS & C E I CO#1	OLMSTEAD	0.0	COLUMBIA GAS OF O
-STARK OILFIELD SERVICES INC				RECEIVED:	01/19/84	JA: OH			
8416911		3400722414		103	107-TF	MERICKA #1	NEW LYME	0.0	
-STONEY HILL RESOURCES				RECEIVED:	01/19/84	JA: OH			
8416912		3415321431		107-TF		STONEY HILL #1	BATH	20.0	EAST OHIO GAS CO
-THE BENATTY CORPORATION				RECEIVED:	01/19/84	JA: OH			
8416913		3412123061		103	107-TF	D MORRIS #3-114	JACKSON	40.0	
-UNIVERSAL EXPLORATION				RECEIVED:	01/19/84	JA: OH			
8416917		3415321525		107-TF		BAUER #2	NORTON	0.0	YANKEE RESOURCES
8416915		3410323527		107-TF		CHRISTIAN UNIT #1	WADSWORTH	0.0	YANKEE RESOURCES
8416916		3410323528		107-TF		SILCHUK #1	WADSWORTH	0.0	YANKEE RESOURCES
-YANKEE EXPLORATION INC				RECEIVED:	01/19/84	JA: OH			
8416923		3415723916		103	107-TF	DONALD FISHER #2	FAIRFIELD	0.0	YANKEE RESOURCES
8416921		3405923510		103	107-TF	GEORGE FRIESS #1	MONROE	0.0	YANKEE EXPLORATIO
8416922		3415123863		103	107-TF	HOOVER UNIT #1	WASHINGTON	0.0	YANKEE RESOURCES
-VICTOR PETROLEUM CORP				RECEIVED:	01/19/84	JA: OH			
8416918		3411123003		103	107-TF	LOHRI #16	ANTIOCH FIELD	0.0	RIVER GAS CO
-VIKING RESOURCES CORP				RECEIVED:	01/19/84	JA: OH			
8416919		3408520439		103	107-TF	POULSON #1	PERRY	30.0	
8416920		3408520440		103	107-TF	POULSON #2	PERRY	30.0	

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OKLAHOMA CORPORATION COMMISSION

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-ALVIN PETROLEUM INC				RECEIVED:	01/18/84	JA: OK			
8416744	25556	3511124397		103		TUCKER #1 OTC UNIT PROD #111-81581	SCHULTER FIELD	38.0	PHILLIPS PETROLEU
-AMES OIL AND GAS CORP				RECEIVED:	01/19/84	JA: OK			
8416791	23713	3511721753		102-2		C B AMES #14-4	SOUTH ARKANSAS RIVER	21.6	COLORADO GAS COMP
8416790	23712	3511721751		102-2		CECIL NORRIS #2-1	SOUTH ARKANSAS RIVER	140.0	COLORADO GAS COMP
-AMQUEST CORP				RECEIVED:	01/18/84	JA: OK			
8416712	25902	3504521057		103		WORD #1	GRAND WEST	101.0	
-AN-SON CORPORATION				RECEIVED:	01/18/84	JA: OK			
8416704	25812	3508720927		103		C D WALKER #1-17	S BLANCHARD	264.6	
8416705	25813	3508720867		103		LUCY #1-24	SOUTH COLE	36.5	
-ANADARKO LAND & EXPLORATION CO				RECEIVED:	01/18/84	JA: OK			
8416723	25939	3509322763		103		ELSIE MILLER #1-34	CAMPELL	73.0	PHILLIPS PETROLEU
-ANDERMAN/SMITH OPERATING CO				RECEIVED:	01/19/84	JA: OK			
8416804	26022	3503920942		103		J JOE SMITH #1		1095.0	
-ARCO OIL AND GAS COMPANY				RECEIVED:	01/19/84	JA: OK			
8416767	25778	3505921212		103		HUCKABY #1	N W LOVEDALE	73.0	
8416778	26015	3505900000		108		ROSA LEE KUHN #2	NORTH BUFFALO	14.6	MICHIGAN WISCONSI
-AUTUMN ENERGY CORP				RECEIVED:	01/18/84	JA: OK			
8416720	25363	3503725300		103		GRACE #5	KELLYVILLE	250.0	
-BEASLEY OIL CO				RECEIVED:	01/19/84	JA: OK			
8416771	26004	3501121888		103		SCOTT #1	NORTHWEST OMEGA	125.0	PHILLIPS PETROLEU
-BLUE QUAIL ENERGY INC				RECEIVED:	01/18/84	JA: OK			
8416734	25426	3501722510		103		JOHN DARROW #1	MUSTANG	667.1	PHILLIPS PETROLEU
-BOB L LOFTIS				RECEIVED:	01/19/84	JA: OK			
8416753	25943	3506321921		103		ROGERS #1	EAST HORNTOWN	27.0	WELLHEAD ENTERPRI
-BOREN JAMES B ESTATE				RECEIVED:	01/19/84	JA: OK			
8416756	25969	3511100000		103		CRUZ #1 111 77 19	NATURA	33.2	PHILLIPS PETROLEU
-BURKHART PETROLEUM CORP				RECEIVED:	01/19/84	JA: OK			
8416752	25942	3503920921		103		CONKLING #1-35	S E THOMAS	500.0	PUBLIC SERVICE CO
-BURNS-MITCHELL				RECEIVED:	01/19/84	JA: OK			
8416779	21699	3514322244		102-2		WOLFE #4	WILDCAT	60.0	DIAMOND '5' GAS S
-C J CASSELMAN				RECEIVED:	01/18/84	JA: OK			
8416725	26017	3511124302		108		LONG 1-A	MORRIS	18.3	PHILLIPS PETROLEU
8416724	26016	3511124303		108		LONG 2-A	MORRIS	18.3	PHILLIPS PETROLEU
-CHOCTAW GAS CO				RECEIVED:	01/19/84	JA: OK			
8416772	26001	3512120873		103		BROWNE #2	FEATHERSTONE	60.0	SE TRANSMISSION &
-CLARK RESOURCES INC				RECEIVED:	01/18/84	JA: OK			
8416711	25901	3509322727		103		ELLA 2-1	SOONER TREND	20.0	UNION TEXAS PETRO
-CLINKENBEARD CHARLES				RECEIVED:	01/19/84	JA: OK			
8416788	23658	3514723319		102-2		CLINKENBEARD #1	HOGSHOOTER	100.0	BARTLESVILLE GATH
-DYCO PETROLEUM CORPORATION				RECEIVED:	01/18/84	JA: OK			
8416745	26707	3503920944		107-DP		KERR #1-19		0.0	MUSTANG FUEL CORP
-EDWIN L & BERRY R COX				RECEIVED:	01/19/84	JA: OK			
8416768	25964	3504321639		103		WELCH #1	NW PUTNAM	300.0	
-ERH OIL CO				RECEIVED:	01/18/84	JA: OK			
8416700	25632	3508322274		103		FLORINE JINDRA #1		50.0	BUCKEYE NATURAL G
-EXXON CORPORATION				RECEIVED:	01/18/84	JA: OK			
8416730	23549	3500920532		102-2		EVERRITT LONG GAS UNIT #1	ELK CITY WEST	834.0	
-GAMEL LARRY				RECEIVED:	01/18/84	JA: OK			
8416714	23321	3511124024		102-2		QUAIL CREEK #1 111-24024	MOUNDS DISTRICT	127.0	PHILLIPS PETROLEU
-GREER TOM R & WELEMA				RECEIVED:	01/18/84	JA: OK			
8416701	25633	3510700000		103		MARETTE MILLS #1		30.0	SWAB CORP
-HENDERSON EXPLORATION CO				RECEIVED:	01/19/84	JA: OK			
8416784	23023	3503724781		102-2		LOYD JONES #1		335.8	
-HUNGERFORD OIL & GAS INC				RECEIVED:	01/19/84	JA: OK			
8416769	26006	3500320842		103		JESS CRONIN #1	HELENA	1200.0	UNION TEXAS PETRO
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	01/18/84	JA: OK			
8416732	25311	3505120717		108-PB		HURST #1		0.0	ARKANSAS - LOUISI
-KANOKLA ENERGY CORP				RECEIVED:	01/18/84	JA: OK			
8416709	25837	3513322371		102-4	103	HUGHES #1	HUGHES	36.5	KANOKLA ENERGY CO
8416706	25834	3513322385		102-4	103	HUGHES #2	HUGHES	36.5	KANOKLA ENERGY CO
8416707	25835	3513322391		102-4	103	HUGHES #3	HUGHES	36.5	KANOKLA ENERGY CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8416708	25836	3513322398		102-4	103	HUGHES #4	HUGHES	36.5	KANOKLA ENERGY CO
-KANOKLA ENERGY CORP				RECEIVED:		01/19/84 JA: OK			
8416764	24086	3513322303		102-2	103	GAINES #2	GAINES	72.0	KANOKLA ENERGY CO
8416780	22719	3513321732		102-4		JEFFERSON #1		36.5	KANOKLA ENERGY CO
8416781	22720	3513300000		102-4		JORDAN #2	JORDAN	36.5	KANOKLA ENERGY CO
8416782	22721	3513321900		102-4		JORDAN #3	JORDAN	73.0	KANOKLA ENERGY CO
8416795	24411	3513322244		102-4	103	PARKS #1	PARKS	11.0	KANOKLA ENERGY CO
8416796	24528	3513322316		102-4	103	PARKS #2	PARKS	11.0	KANOKLA ENERGY CO
8416783	22381	3513321770		102-4		REED TRUST "A" #1	REED FARM	110.0	KANOKLA ENERGY CO
8416800	25060	3513322339		102-4	103	V-LINE GIBSON #1	V-LINE GIBSON	20.0	KANOKLA ENERGY CO
8416798	25058	3513322340		102-4	103	V-LINE GIBSON #2	V-LINE GIBSON	20.0	KANOKLA ENERGY CO
8416797	25057	3513322344		102-4	103	V-LINE GIBSON #3	V-LINE GIBSON	20.0	KANOKLA ENERGY CO
8416799	25059	3513322345		102-4	103	V-LINE GIBSON #4	V-LINE GIBSON	20.0	KANOKLA ENERGY CO
-KEPCO INC				RECEIVED:		01/19/84 JA: OK			
8416792	23821	3501722481		102-2		WHEATLEY - SMITH #1-34	NORTH YUKON	0.0	CONOCO INC
-KERR-MCGEE CORPORATION				RECEIVED:		01/18/84 JA: OK			
8416736	25496	3504921948		103		H E ROGERS #1	MAYSVILLE	0.0	WARREN PETROLEUM
-KLEIN OIL CO				RECEIVED:		01/19/84 JA: OK			
8416785	23195	3503100000		102-2		PITTMAN NO 3	PUMPKIN CENTER	0.0	ARKANSAS LOUISIAN
-KWB OIL PROPERTY MANAGEMENT INC				RECEIVED:		01/19/84 JA: OK			
8416763	23956	3500320951		102-4		FEELY #1-23	WAKITA	183.0	SUN EXPLORATION &
-L E JONES PRODUCTION COMPANY				RECEIVED:		01/19/84 JA: OK			
8416787	23323	3506720505		102-2		JONES - KALKMAN #1		11.0	AMINOIL USA INC
-LADD PETROLEUM CORPORATION				RECEIVED:		01/18/84 JA: OK			
8416721	25913	3504320839		108		CONNELL #2	S W CANTON	15.3	TRANSOK PIPELINE
8416722	25914	3504320606		108		ISAAC SMOKER #1	S W CANTON	14.2	OKLAHOMA GAS & EL
-LEAR PETROLEUM EXPLORATION INC				RECEIVED:		01/19/84 JA: OK			
8416805	26864	3514920406		107-DP		HECK #1-12B	SW LIBBIE	4.0	EL PASO NATURAL G
-LEEDE OIL & GAS INC				RECEIVED:		01/18/84 JA: OK			
8416710	25639	3508720911		103		FALLON #2		226.0	TRANSOK PIPE LINE
-M M RESOURCES INC				RECEIVED:		01/19/84 JA: OK			
8416793	23836	3500320840		102-2	103	DOROTHY #1		100.1	UNION TEXAS PETRO
-MAGIC CIRCLE ENERGY CORP				RECEIVED:		01/18/84 JA: OK			
8416741	25545	3515121395		103		FAYE #2-28	EAST WAYNOKA	11.0	MAGIC CIRCLE GAS
-MAGIC CIRCLE ENERGY CORP				RECEIVED:		01/19/84 JA: OK			
8416776	26013	3515121383		103		ENGLISH #2-5	S W WAYNOKA	16.0	MAGIC CIRCLE GAS
8416775	26010	3507323784		103		MCCARTHY #1	EAST OKARCHE	105.0	PHILLIPS PETROLEU
-MARION CORPORATION				RECEIVED:		01/19/84 JA: OK			
8416761	23201	3514723756		102-2		COLPITT "A" M-3	HOGSHOOTER N	73.0	NORTHWEST CENTRAL
8416759	23199	3514723894		102-2		KITTRELL M-2	HOGSHOOTER S	36.5	NORTHWEST CENTRAL
8416760	23200	3514723757		102-2		WEEKS RALSTON M-3	HOGSHOOTER N	109.5	NORTHWEST CENTRAL
-MEWBOURNE OIL COMPANY				RECEIVED:		01/18/84 JA: OK			
8416718	23825	3504521108		102-4		HENDERSON "23" #1 OTC #	SOUTH HIGGINS (MORROW	263.0	
-NOVA ENERGY CORPORATION				RECEIVED:		01/18/84 JA: OK			
8416735	25480	3501720884		103		GRUMMER HUGGLER #1-3	N RICHLAND	0.0	TRANSOK PIPE LINE
-PACE OIL & CHEMICAL				RECEIVED:		01/19/84 JA: OK			
8416774	25985	3507122719		103		WOODERSON #3	BRAMAN	100.0	ARKANSAS LOUISIAN
-PHILLIPS PETROLEUM COMPANY				RECEIVED:		01/19/84 JA: OK			
8416757	25971	3504721307		108		KOSTED A #1	SOONER TREND	16.0	TRANSOK PIPELINE
8416801	25417	3504721621		108		KOSTED B #2	SOONER TREND	16.5	TRANSOK PIPELINE
8416758	25975	3501721877		108		KREMEIER B #1	NORTH CONCHO	8.0	ONG WESTERN INC
-PITCO				RECEIVED:		01/18/84 JA: OK			
8416715	23708	3510920704		102-2	103	MIDWAY #1-4		1058.5	
8416716	23709	3510920712		102-2	103	WOOD #1-3		529.3	
-R & M PETROLEUM INC				RECEIVED:		01/18/84 JA: OK			
8416742	25548	3503725249		103		CHIEF #1	STROUD	55.0	
-R & M PETROLEUM INC				RECEIVED:		01/19/84 JA: OK			
8416786	23275	3503723313		102-2		BRYSON OTC 037-67773	PUNKIN FIELD	30.0	COLORADO GAS COMP
-RAMCO OIL CO				RECEIVED:		01/18/84 JA: OK			
8416703	25708	3511721858		103		GRIESEL #2		7.3	HJD GAS CO
-RED EAGLE OIL CO				RECEIVED:		01/19/84 JA: OK			
8416766	25997	3509322698		103		A J #1	N W OKEENE	0.0	PIONEER GAS PRODU
8416770	25996	3509322688		103		MONAHAN #1	N W OKEENE	273.0	PHILLIPS PETROLEU
-RICHARD WHEELER JR				RECEIVED:		01/18/84 JA: OK			
8416726	26019	3504723425		103		KIM #1	ANTELOPE	36.0	ARCO OIL & GAS CO
-RICHARD WHEELER JR				RECEIVED:		01/19/84 JA: OK			
8416803	26020	3504723443		103		KIM #2	ANTELOPE	15.0	ARCO OIL & GAS CO
-ROBINOWITZ OIL CO				RECEIVED:		01/18/84 JA: OK			
8416738	25539	3504723410		103		HELBERG #16-1	NORTHEAST ENID	150.0	GRACE PETROLEUM C
-ROY LAWRENCE DRILLING CO INC				RECEIVED:		01/19/84 JA: OK			
8416765	25569	3511700000		103		RYAN-OSBORN #4		50.0	PHILLIPS PETROLEU
-SAMEDAN OIL CORPORATION				RECEIVED:		01/18/84 JA: OK			
8416719	23827	3501521128		102-2		FLANSBURG #1-12		40.0	EL PASO NATURAL G
-SANTA FE-ANDOVER OIL CO				RECEIVED:		01/19/84 JA: OK			
8416794	23865	3501722184		102-2		BOMHOFF #20-2		150.0	DELHI GAS PIPELIN
8416762	23950	3501721528		102-2	103	ROTHER #10-1		47.0	DELHI GAS PIPELIN
-SENECA OIL CO				RECEIVED:		01/18/84 JA: OK			
8416729	23457	3501722432		102-4		SIMPSON #2-5		730.0	PHILLIPS PETROLEU
-STEVE JERNIGAN INC				RECEIVED:		01/18/84 JA: OK			
8416728	23505	3510920585		102-4		MARY HEINEN #1		0.0	PHILLIPS PETROLEU
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:		01/19/84 JA: OK			
8416777	26014	3500721929		108		BAXTER UNIT #2	MOCANE (CHESTER)	2.0	PANHANDLE EASTERN
-TENNECO OIL COMPANY				RECEIVED:		01/18/84 JA: OK			
8416743	25547	3515320781		103		FOX #2-4	CHESTER WEST	110.0	NATURAL GAS PIPE
-TEXACO INC				RECEIVED:		01/18/84 JA: OK			
8416731	23901	3513700000		108-PB		W G BARNARD #1	ARDMORE	0.0	ARKANSAS-LOUISIAN
-TEXACO INC				RECEIVED:		01/19/84 JA: OK			
8416773	25982	3511700000		108		W J LAUDERDALE #10	TERLTON N	4.8	HJD CATTLE CO
-TEXANA RESOURCES CORP				RECEIVED:		01/18/84 JA: OK			
8416702	25681	3501500000		103		THOMAS HEIRS #1	WEST BINGER	3.0	PHILLIPS PETROLEU
-THE WIL-MC OIL CORP				RECEIVED:		01/18/84 JA: OK			
8416713	25938	3510300000		103		BAETZ "A" #1	PERRY	14.0	
-THREE SANDS OIL INC				RECEIVED:		01/19/84 JA: OK			
8416755	25967	3510322022		103		BEN #5-25		54.8	AMINOIL USA INC
-TOM F MARSH INC				RECEIVED:		01/18/84 JA: OK			
8416739	25541	3502500000		108		HAGAN A #2	KEYES	4.0	PHILLIPS PETROLEU
8416740	25542	3502500000		108		HAGAN A #3		8.0	PHILLIPS PETROLEU
-TRANS-WESTERN EXPLORATION INC				RECEIVED:		01/18/84 JA: OK			
8416717	23767	3514920303		103		HUMBARGER #1-34		140.0	OKLAHOMA GAS & EL
-TXO PRODUCTION CORP				RECEIVED:		01/18/84 JA: OK			
8416733	25422	3504321772		103		BUTLER "D" #1	N PUTNAM	0.0	DELHI GAS PIPELIN
8416737	25538	3509322732		103		KLIEWER "C" #1	NW OKEENE	0.0	DELHI GAS PIPELIN
8416727	23509	3512920967		102-2		MOONEY "A" #1	STRONG CITY	0.0	DELHI GAS PIPELIN
-TXO PRODUCTION CORP				RECEIVED:		01/19/84 JA: OK			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8416789	23698	3503920875		102-2		WHITE "K" #1	E CARPENTER	0.0	DELHI GAS PIPELIN
-VIERLING C C				RECEIVED:	01/19/84	JA: OK			
8416802	25624	3511100000		108		VAUGHAN #1-D	BALD HILL	0.0	PHILLIPS PETROLEU
-WARD PETROLEUM CORP				RECEIVED:	01/19/84	JA: OK			
8416754	25965	3505121363		103		ELIZABETH #1		130.0	PHILLIPS PETROLEU
**********									
** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, DENVER,CO									
**********									
-ARCO OIL AND GAS COMPANY				RECEIVED:	01/19/84	JA: CO 1			
8416811	CD 0191-83	0506706386		107-TF		SOUTHERN UTE 14-2 32-10 (TF) (TC)	DAKOTA	35.0	NORTHWEST PIPELIN
-BEREN CORPORATION				RECEIVED:	01/19/84	JA: CO 1			
8416810	CD 0190-83	0512309901		108		DUNCAN-FEDERAL #1	SOONER	17.2	KN ENERGY INC
-CHANDLER & ASSOCIATES INC				RECEIVED:	01/19/84	JA: CO 1			
8416808	CD 0141-83	0510307773		108		NORTH DOUGLAS CREEK FED 5-6	DOUGLAS CREEK NORTH	21.0	NORTHWEST PIPELIN
-MASTORAKOS D A				RECEIVED:	01/19/84	JA: CO 1			
8416812	CD 0199-83	0510300000		103	107-TF	FEDERAL 11-1	CATHEDRAL CREEK	25.0	NORTHWEST PIPELIN
-RIVIERA DRILLING & EXPLORATION				RECEIVED:	01/19/84	JA: CO 1			
8416809	CD 0189-83	0505106008		102-2		PETRO-LEWIS #11-90-7 NE	UNNAMED	150.0	NORTHWEST PIPELIN
**********									
** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, CASPER,WY									
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-LOMAX EXPLORATION COMPANY				RECEIVED:	01/17/84	JA: UT 5			
8416828	074-83	4301330751		102-2		MONUMENT FEDERAL #6-35	MONUMENT BUTTE	36.0	MOUNTAIN FUEL SUP
-NATURAL GAS CORPORATION OF CALIF				RECEIVED:	01/17/84	JA: UT 5			
8416827	066-83	4301330680		102-2		NGC WELL #12-8-H	PLEASANT VALLEY	54.0	PG & E SUPPLY CO
-TXO PRODUCTION CORP				RECEIVED:	01/17/84	JA: UT 5			
8416826	075-83	4301930799		103		HOUGEN FEDERAL "A" #1	UNDESIGNATED	194.0	NORTHWEST PIPELIN
-APACHE CORPORATION				RECEIVED:	01/17/84	JA: WY 5			
8416829	W671-2	4903520604		103		BIRD CANYON FEDERAL #3-14	BIRD CANYON	200.0	NORTHWEST PIPELIN
-CHEVRON U S A INC				RECEIVED:	01/17/84	JA: WY 5			
8416831	W783-2	4904120400		102-4		PRU 13-8A	EAST PAINTER RESERVOI	1180.0	
8416830	W782-2	4904120339		102-4		PRU 24-32 B	EAST PAINTER RESERVOI	180.0	
8416832	W784-2	4904120410		102-4		PRU 31-18A	EAST PAINTER RESERVOI	400.0	

[FR Doc. 84-4684 Filed 2-21-84; 8:45 am]

BILLING CODE 6717-01-C

[Vol. 1066]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: February 16, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Sectoin 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS

ISSUED FEBRUARY 16, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-AGAR & AGAR INC				RECEIVED:	01/20/84	JA: TX			
8417205	F-8A-076555	4211531494		103		CLAY #1 ID #63311	PATRICIA WEST (SPRABE	6.6	PHILLIPS PETROLEU
-AMOCO PRODUCTION CO				RECEIVED:	01/20/84	JA: TX			
8417138	F-06-076127	4236531401		103		BURNETT BROTHERS "C" #1	CARTHAGE (TRAVIS PEAK	20.0	
8417119	F-10-075995	4219530889		103		C W LAIRD #3	SHAPLEY - MORROW	60.0	PHILLIPS PETROLEU
8416991	F-05-072029	4237930107		102-2		DELLA GARNER GAS UNIT #1	DUNBAR (SMACKOVER)	500.0	LONE STAR GAS CO
8417120	F-10-075996	4229595002		103		DOROTHEA ROBERTS #2	DARROUZETT-TONKAWA	87.0	PHILLIPS PETROLEU
8417108	F-10-075903	4221131580		103		ETHEREDGE GAS UNIT #5	HEMPHILL - GRANITE WA	250.0	WESTAR TRANSMISSI
8417107	F-10-075902	4221131581		103		ETHEREDGE GAS UNIT #6	HEMPHILL - GRANITE WA	250.0	WESTAR TRANSMISSI
-ARCO OIL AND GAS COMPANY				RECEIVED:	01/20/84	JA: TX			
8416993	F-7C-072216	4210334117		103	107-TF	C W MEADOWS #1	OZONA (CANYON SAND)	60.0	
8417051	F-04-074909	4213136254		102-4		GORMAN GAS UNIT #5	E SEVEN SISTERS (0-55	520.0	TEXAS EASTERN TRA
-ASHTOLA EXPLORATION CO INC				RECEIVED:	01/20/84	JA: TX			
8417121	F-7B-075999	4242900000		102-4		G D DICKIE INC #1	DICKIE RANCH (CONGL)	50.0	DAMSON GAS PROCES
-AZMUTH PRODUCTION CO				RECEIVED:	01/20/84	JA: TX			
8417155	F-02-076245	4246932039		102-4		VIVIAN WILLIAMS #1	WILLIAMS (FRIO 3950')	1277.5	HOUSTON PIPE LINE
-BALLARD EXPLORATION CO INC				RECEIVED:	01/20/84	JA: TX			
8417061	F-05-075143	4216130787		102-4		CHARLES D NETTLE #1	RISCHERS STORE (NETTL	350.0	LONE STAR GAS CO
8417140	F-05-076140	4221330380		102-4		W R KINABREW #1	INGRAM TRINITY (RODES	0.0	LONE STAR GAS CO
-BEN J TAYLOR				RECEIVED:	01/20/84	JA: TX			
8417087	F-7B-075659	4236732537		102-4		DUNN #1 20231	MOBY DICK (MARBLE FAL	20.0	EMPIRE PIPELINE -
-BJB EXPLORATION CO				RECEIVED:	01/20/84	JA: TX			
8417041	F-02-074578	4246900000		102-4		TUCH #1-T	COLOGNE (4350)	100.0	
-BLACKFOOT PRODUCTION CORP				RECEIVED:	01/20/84	JA: TX			
8416980	F-04-070521	4224931636		102-4		JOHN B LACEY	PAISANO (VICKSBURG)	144.0	SOUTHERN GAS PIPE
-BRAMMER ENGINEERING INC				RECEIVED:	01/20/84	JA: TX			
8417035	F-06-074130	4220331055		102-4		C F FRANCIS UNIT #2	HARLETON N E (PETTIT)	140.0	TEJAS GAS CORP
-BRECK OPERATING CORP				RECEIVED:	01/20/84	JA: TX			
8417184	F-09-076386	4250336697		103		SECTION 606 "A" #6	JAMES	912.5	EAGLE PETROLEUM C
-BTA OIL PRODUCERS				RECEIVED:	01/20/84	JA: TX			
8417198	F-08-076475	4231732808		103		MUSTANG 'D' #12 7422 JV-S	LACAFF (WOLFCAMP)	18.3	PHILLIPS PETROLEU
8417082	F-08-075597	4213534325		103		SABINE #5	COWDEN NORTH	3.4	AMOCO PRODUCTION
8417094	F-08-075733	4217331480		102-4		&102 JV-P FRY #3	BLALOCK LAKE S E (WOL	33.6	PHILLIPS PETROLEU
-CACHARA OIL & GAS CO				RECEIVED:	01/20/84	JA: TX			
8417054	F-03-074986	4228700000		102-2		BOWERS #1	GIDDINGS "AUSTIN CHAL	0.0	PHILLIPS PETROLEU
-CHAMPLIN EXPLORATION INC				RECEIVED:	01/20/84	JA: TX			
8417117	F-8A-075978	4207931812		103		RJR RANCH-YOUNG 3-2	BONANZA (SAN ANDRES)	4.2	WARREN PETROLEUM
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	01/20/84	JA: TX			
8417079	F-06-075545	4236500000		108		CARTHAGE GAS UNIT 22 #1	CARTHAGE (PETTIT UPPE	12.7	TENNESSEE GAS PIP
8417123	F-03-076002	4205132520		102-2		L J KOCUREK #4	GIDDINGS (AUSTIN CHAL	236.9	FERGUSON CROSSING
8417045	F-03-071618	4204131010		102-2		P RUFFINO JR "A" #1	KURTEN (BUDA)	109.5	
-CHAPTER PETROLEUM				RECEIVED:	01/20/84	JA: TX			
8417183	F-10-076384	4217900000		103		LANGHAM #5A	PANHANDLE - GRAY	0.0	COLTEXO CORP
-CLAYTON W WILLIAMS JR				RECEIVED:	01/20/84	JA: TX			
8417008	F-03-072817	4228700000		102-2		G H KOUDELKA #1	HOOKER CREEK (NAVARRO	0.0	VALERO TRANSMISSI
-COASTAL OIL & GAS CORP				RECEIVED:	01/20/84	JA: TX			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8416982	F-04-071103	4221531322		103		PENNZOIL FEE 1-V	JEFFRESS S F (VICKSBU	1460.0	
8416990	F-04-071898	4221531322		102-4		PENNZOIL FEE 1-V	JEFFRESS SE (VICKSBUR	1460.0	
-CORDOVA RESOURCES INC				RECEIVED:	01/20/84	JA: TX			
8417030	F-08-073977	4210300000		108		SHELL-MOSELEY #3	BAYVIEW	1.5	PHILLIPS PETROLEU
8417029	F-08-073976	4210300000		108		SHELL-MOSELEY #5	BAYVIEW	2.7	PHILLIPS PETROLEU
-CORPUS CHRISTI OIL AND GAS CO				RECEIVED:	01/20/84	JA: TX			
8417059	F-03-075082	4270300000		102-4		STATE TRACT 520-L SE/4 WELL #2	EL GORDO (13,700')	0.0	HOUSTON PIPELINE
-CRYSTAL OIL & LAND CO				RECEIVED:	01/20/84	JA: TX			
8417118	F-06-075982	4206730441		102-4		TERRY "B" #1-U	RODESSA	270.0	BRECKENRIDGE GASO
-CYCLONE EXPLORATION INC				RECEIVED:	01/20/84	JA: TX			
8417007	F-7C-072794	4243532894		103	107-TF	FIELDS-PACIFIC TIN #1-24	SAWYER (CANYON)	150.0	INTRATEX GAS CO
-DAVID ALBERT OIL & GAS				RECEIVED:	01/20/84	JA: TX			
8416940	F-09-058742	4223700000		108-ER		THACKER #1	PERRIN EAST	0.0	CITIES SERVICE CO
-DIAMOND SHAMROCK CORPORATION				RECEIVED:	01/20/84	JA: TX			
8416927	F-10-031503	4219500000		108-ER		C M FARMS #1	HANSFORD	0.0	NORTHERN NATURAL
8416945	F-10-063945	4221100000		108-ER		FRASS #1-107	CANADIAN	0.0	NORTHERN NATURAL
8416933	F-10-048647	4221100000		108-ER		JOHN C ISAACS JR K #1-206	CANADIAN WEST	0.0	NORTHERN NATURAL
8416924	F-10-005436	4242100000		108-ER		LOWE #1	TEXAS HUGOTON	0.0	NORTHERN NATURAL
-DIAMOND SHAMROCK EXPLORATION CO				RECEIVED:	01/20/84	JA: TX			
8417187	F-10-076414	4234100000		108		BRELSFORD #1	PANHANDLE WEST	0.0	NORTHERN NATURAL
-DORCHESTER EXPLORATION INC				RECEIVED:	01/20/84	JA: TX			
8417032	F-10-074033	4221131571		103		LUCILLE WRIGHT #4	CANADIAN S E	0.0	ARKANSAS LOUISIAN
8417201	F-08-076511	4243131356		103		TERRY 6-#3	CONGER (PENN)	299.0	VALERO TRANSMISSI
-DYCO PETROLEUM CORPORATION				RECEIVED:	01/20/84	JA: TX			
8417022	F-10-073626	4248331120		107-DP		CHANDLER #3	ALLISON PARKS (U MORR	200.0	EL PASO NATURAL G
-DYNE OIL & GAS INC				RECEIVED:	01/20/84	JA: TX			
8417199	F-10-076484	4223300000		103		STEVENSON #5 (RRC #01595)	PANHANDLE	0.0	DIAMOND SHAMROCK
-EADS OPERATING CO				RECEIVED:	01/20/84	JA: TX			
8417014	F-04-073230	4200730233		102-4		STATE TRACT 387 #1	GOOSE ISLAND NORTH (R	201.0	
-EDEN EXPLORATION INC				RECEIVED:	01/20/84	JA: TX			
8417200	F-7B-076488	4236732591		102-4		T D HALE #1	DENNIS WEST (STRAWN)	0.0	PARKER GAS INC
-EDWIN L & BERRY R COX				RECEIVED:	01/20/84	JA: TX			
8416939	F-04-058275	4224731421		102-4	107-TF	ARNOLDO A MARTINEZ #1	PETROLEO HONDO	185.0	
-EMERALD PETROLEUM CORP				RECEIVED:	01/20/84	JA: TX			
8417071	F-09-075330	4207733061		103		DAVID D #1	BLUE GROVE (CADDO)	54.0	FAGADAU ENERGY CO
-EXCELSIOR OIL CORP				RECEIVED:	01/20/84	JA: TX			
8417130	F-06-076070	4245930577		103	107-TF	ODOM GAS UNIT #1-WELL #2	ROSEWOOD (COTTON VALL	500.0	WESTERN GAS CORP
8417129	F-06-076069	4245930588		103	107-TF	WILL MCKNIGHT GAS UNIT #1-2	ROSEWOOD (COTTON VALL	500.0	WESTERN GAS CORP
-EXXON CORPORATION				RECEIVED:	01/20/84	JA: TX			
8417004	F-03-072717	4248132474		103		H C COCKBURN #110	MAGNET WITHERS (F-15	300.0	
8417156	F-08-076247	4210333244		103		J B TUBB A/C 1 #285	SAND HILLS (JUDKINS)	25.0	EL PASO NATURAL G
8417203	F-7C-076542	4243131335		103		LOU E JOHNSON ESTATE A/C 1 #52	JAMESON (STRAWN)	20.0	
8417000	F-8A-072540	4216532535		103		ROBERTSON CLEARFORK UNIT #4103	ROBERTSON N (CLEAR FO	15.0	PHILLIPS PETROLEU
8417124	F-8A-076009	4216532636		103		ROBERTSON CLEARFORK UNIT #7801	ROBERTSON N (CLEAR FO	15.0	PHILLIPS PETROLEU
8416964	F-08-067367	4231732163		103		STATE UNIVERSITY DD #3	M A K (SPRABERRY)	17.0	PHILLIPS PETROLEU
8417009	F-7C-072833	4210533724		103	107-TF	STATE UNIVERSITY ET #1	INGHAM (CANYON 6400)	195.0	SOUTHWESTERN GAS
8417099	F-08-075794	4200333602		103		STATE UNIVERSITY MUTEX CONS #25	HUTEX (DEVONIAN)	5.0	PHILLIPS PETROLEU
8417043	F-04-074629	4213133917		103		V KOHLER A-127 107439	KOHLER (QUEEN CITY)	25.6	TENNESSEE GAS PIP
-FARGO ENERGY CORP				RECEIVED:	01/20/84	JA: TX			
8417053	F-03-074981	4214900000		102-2		MART #1	GIDDINGS (AUSTIN CHAL	73.0	PHILLIPS PETROLEU
-FRIO EXPLORATION CO				RECEIVED:	01/20/84	JA: TX			
8417069	F-03-075259	4208931381		102-4		REPUBLIC BANK DALLAS TR ET AL	NORTH CHESTERVILLE	200.0	SEAGULL PIPELINE
-FUNK EXPLORATION INC				RECEIVED:	01/20/84	JA: TX			
8416943	F-10-062493	4235731179		102-4		BAXTER #1	FUNK (CHESTER BASAL)	36.0	PHILLIPS PETROLEU
-GEORGE L ROUSSEAU				RECEIVED:	01/20/84	JA: TX			
8417052	F-03-074912	4205132431		102-4		GREEN "B" #2	HOOKER CREEK (NAVARRO	90.0	PHILLIPS PETROLEU
-GETTY OIL COMPANY				RECEIVED:	01/20/84	JA: TX			
8416963	F-02-066700	4205700000		102-4		TEXAS STATE TRACT 113 #1	PANTHER REEF N W (FRI	0.0	ALUMINUM CO OF AM
-GHR ENERGY CORP				RECEIVED:	01/20/84	JA: TX			
8416974	F-04-069820	4250531599		103	107-TF	MCMURREY #29	J C MARTIN (LOBO)	900.0	GHR PIPELINE CORP
8417011	F-04-072975	4247933568		102-4		SCHWARZ #6	SCHWARZ (10500)	350.0	GHR PIPELINE CORP
-GILLRING OIL CO				RECEIVED:	01/20/84	JA: TX			
8417083	F-04-075600	4235500000		102-4		SIMMONDS & PERRY #4	BRAYTON N	0.0	CHANNEL INDUSTRIE
-GRACE PETROLEUM CORPORATION				RECEIVED:	01/20/84	JA: TX			
8416953	F-06-065679	4241930345		103		EMMIT STOCKMAN	GARRISON SOUTH (PETTI	0.0	UNITED GAS PIPELI
8416954	F-06-065681	4241930315		103		J R GRAVES #1	GARRISON SOUTH (PETTI	0.0	UNITED GAS PIPELI
8416952	F-06-065678	4234730476		103		JOPLING #1	GARRISON SOUTH (PETTI	0.0	UNITED GAS PIPELI
-GRAHAM ENERGY LTD				RECEIVED:	01/20/84	JA: TX			
8416981	F-7C-070903	4208103114		103		J S WALKER "A" #2	SILVER (CANYON)	0.0	SUN GAS CO
-GROWTEX INC				RECEIVED:	01/20/84	JA: TX			
8417091	F-7B-075705	4236732221		102-4		NASH HEIRS #1-C (GAS) (107817)	NASH (STRAWN)	50.0	EMPIRE PIPELINE C
8417092	F-7B-075706	4236732221		102-4		NASH HEIRS #1-T (GAS) (107828)	NASH (CADDO)	89.0	EMPIRE PIPELINE C
-GULF OIL CORPORATION				RECEIVED:	01/20/84	JA: TX			
8417036	F-10-074143	4229531208		107-TF		PEARL WHEAT #5-765	PEERY (CLEVELAND)/CLE	9.5	TRANSWESTERN PIPE
-H & L OPERATING COMPANY				RECEIVED:	01/20/84	JA: TX			
8417153	F-10-076232	4235731416		102-4		HOCKING "B" #2-31	BOOKER N (MORROW UPPE	120.0	NORTHERN GAS PROD
-H L BROWN JR				RECEIVED:	01/20/84	JA: TX			
8417066	F-08-075243	4213533964		103		NELSON #5 RRC #20728	BOB (PENN)	37.3	SHELL PIPELINE CO
-HAMCO EXPLORATION & DEVELOPMENT CO				RECEIVED:	01/20/84	JA: TX			
8417194	F-02-076453	4229733318		102-4	103	HAMCO-WEATHERSBY #1 107086	MT LUCAS N W (HOCKLEY	75.0	REATA INDUSTRIAL
-HCW EXPLORATION INC				RECEIVED:	01/20/84	JA: TX			
8417076	F-09-075464	4223732296		108		CAMPBELL-WOOD #1 I D #019025	NEWPORT SOUTH (BEND C	1.7	CITIES SERVICE CO
-HENRY PETROLEUM CORP				RECEIVED:	01/20/84	JA: TX			
8416975	F-7C-069907	4236100000		103		COX "A" 82-1Y	SPRABERRY (TREND AREA	0.0	PHILLIPS PETROLEU
8416955	F-7C-066000	4238300000		103		UNIVERSITY 29-1Y	SPRABERRY (TREND AREA	0.0	J L DAVIS
-HILL INTERNATIONAL PRODUCTION CO				RECEIVED:	01/20/84	JA: TX			
8417180	F-03-076343	4204130908		102-2		B W MOOREHEAD #1	KURTEN (BUDA)	0.0	FERGUSON CROSSING
-HINTON PRODUCTION COMPANY				RECEIVED:	01/20/84	JA: TX			
8416983	F-05-071327	4216130769		103	107-TF	MILLS GAS UNIT WELL #1	TEAGUE W (COTTON VALL	500.0	TEXAS UTILITIES F
-HLH PETROLEUM CORP				RECEIVED:	01/20/84	JA: TX			
8417113	F-06-075926	4245930565		102-4	107-TF	S P VICTORY JR #1	GLADEWATER (HAYNESVIL	600.0	TEJAS GAS CORP
-HONDO ENERGY LTD				RECEIVED:	01/20/84	JA: TX			
8417110	F-7B-075907	4242953641		102-4		JANETTA JENNINGS #1	JILL (DUFFER) FIELD	54.0	SOUTHWESTERN GAS
-HUDSON W H				RECEIVED:	01/20/84	JA: TX			
8417161	F-7C-076253	4210532697		103		PFLUGER ET AL #2 (06749)	WEGER (SAN ANDRES)	3.6	CROCKETT COUNTY G
8417157	F-7C-076249	4210533676		103		PFLUGER ET AL #3 (06749)	WEGER (SAN ANDRES)	3.6	CROCKETT COUNTY G
8417162	F-7C-076254	4210531037		103		STRAUSS ETAL #1 (07188)	WEGER SW (GRAYBURG-SA	3.6	CROCKETT COUNTY G
8417164	F-7C-076256	4210531169		103		STRAUSS-PFLUGER ET AL #1 (07221)	WEGER SW (GRAYBURG-SA	3.6	CROCKETT COUNTY G
8417159	F-7C-076251	4210532702		103		UNIVERSITY LANDS 12 #1 (08463)	WEGER SW (GRAYBURG-SA	3.6	CROCKETT COUNTY G
8417158	F-7C-076250	4210533684		103		UNIVERSITY LANDS 12 #2 (09638)	WEGER (SAN ANDRES)	3.6	CROCKETT COUNTY G
8417163	F-7C-075255	4210532701		103		UNIVERSITY LANDS 13 #1 (08435)	WEGER SW (GRAYBURG-SA	3.6	CROCKETT COUNTY G
8417160	F-7C-076252	4210533683		103		UNIVERSITY LANDS 13 #2 (09847)	WEGER (SAN ANDRES)	3.6	CROCKETT COUNTY G
-HUFO PRODUCTION CORP				RECEIVED:	01/20/84	JA: TX			
8416978	F-10-070304	4234100000		103		JOHNSON "B" #5	PANHANDLE	0.0	PANHANDLE EASTERN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8416977	F-10-070303	4234100000		103		JOHNSON "B" #9	PANHANDLE	0.0	PANHANDLE EASTERN
-INDIAN WELLS OIL CO				RECEIVED:	01/20/84	JA: TX			
8417047	F-7C-074709	4223532105		103		ROCKER B 1949-3	ELA SUGG (WOLFCAMP)	0.0	NORTHERN NATURAL
8417048	F-7C-074710	4223532107		103		WILLIAMS #16-1	BROOKS (CANYON K)	0.0	NORTHERN NATURAL
-INVESTEK INC				RECEIVED:	01/20/84	JA: TX			
8417148	F-09-076177	4223700000		102-4		J E HENDERSON "B" #1	HENDERSON (ATOKA)	165.0	TEXAS UTILITIES F
8417147	F-09-076176	4223700000		102-4		J E HENDERSON A #4	WALL (CONGL)	36.0	SOUTHWESTERN GAS
-J BROCK				RECEIVED:	01/20/84	JA: TX			
8417046	F-03-074660	4204100000		102-2		HALEN #1	KURTEN (GEORGETOWN)	1095.0	FERGUSON CROSSING
-J-O'B OPERATING CO & ENTERPRISE RES				RECEIVED:	01/20/84	JA: TX			
8417074	F-06-075424	4236730964		102-4		T M PETERSON #2	NACONICHE CREEK (TRAV	540.0	UNITED GAS PIPE L
-JACKSON EXPLORATION INC				RECEIVED:	01/20/84	JA: TX			
8417093	F-08-075724	4231732727		103		HAGGARD #1	SPRABERRY (TREND AREA	12.0	ADOBE OIL & GAS C
-JOHN H HENDRIX CORP				RECEIVED:	01/20/84	JA: TX			
8417170	F-08-076283	4213334443		102-4	103	ABELL CITY "C" #1	WATCO (GRAYBURG)	94.9	EL PASO NATURAL G
-JOHN L COX				RECEIVED:	01/20/84	JA: TX			
8416972	F-7C-069668	4236132020		103		MOBIL NEAL "C" #1	BENEDUM (FUSSELMAN)	10.0	PHILLIPS PETR CO
8416995	F-7C-072354	4246132033		103		MOBIL-TXL "15" #1	PEGASUS S (BEND)	10.0	MOBIL PRODUCING T
8417072	F-7C-075335	4246132039		103		MUBIL-NEAL "36" #1	BENEDUM (FUSSELMAN)	10.0	PHILLIPS PETR CO
8417078	F-7C-075518	4238332652		103		ROCKER B "E" #9	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8417077	F-7C-075516	4238332647		103		ROCKER B "M" #28	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8417075	F-7C-075449	4238332651		103		ROCKER B "M" #29 RRC #04855	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	01/20/84	JA: TX			
8416932	F-10-046422	4229500000		108-5A		SLOUGH #1-8	BECHTOLD	0.0	NORTHERN NATURAL
-KETAL OIL PRODUCING CO				RECEIVED:	01/20/84	JA: TX			
8416988	F-7C-071758	4208131180		103		PENTECOST "D" #1	MEADOW CREEK (CANYON)	20.1	SUN EXPLORATION &
-LARIAT OIL CO				RECEIVED:	01/20/84	JA: TX			
8417151	F-10-076190	4217931403		103		MEERS #1	PANHANDLE GRAY COUNTY	57.0	CITIES SERVICE OI
-LEONARD BROTHERS OPERATING CO				RECEIVED:	01/20/84	JA: TX			
8417122	F-7B-076001	4242933659		102-4		A FAMBRO "D" #1	MCBRIDE (BEND CONGL)	300.0	SOUTHWESTERN GAS
8416986	F-7B-071687	4213334682		102-4		MATTHEWS #1 (20222)	I C (CADDO)	8.0	LONE STAR GAS CO
-LEWIS & ATKINS OIL & GAS INC				RECEIVED:	01/20/84	JA: TX			
8417027	F-7C-073847	4238332504		103		UNIVERSITY 15 "A" #1	SPRABERRY (TREND AREA	73.0	J L DAVIS
8417154	F-7C-076240	4238332505		103		UNIVERSITY 15 "B" #1	SPRABERRY (TREND AREA	73.0	J L DAVIS
8417026	F-7C-073845	4238332503		103		UNIVERSITY 15 "D" #1	SPRABERRY (TREND AREA	73.0	J L DAVIS
-MALOUF ABRAHAM CO INC.				RECEIVED:	01/20/84	JA: TX			
8417100	F-10-075836	4221131574		103		HEXT "A" #1	SPARKS (TONKAWA)	0.0	DIAMOND CHEMICAL
-MAPCO PRODUCTION COMPANY				RECEIVED:	01/20/84	JA: TX			
8417137	F-08-076116	4217331420		103		WHIT #1-35	BIG WHIT	27.0	PHILLIPS PETROLEU
-MARALO INC				RECEIVED:	01/20/84	JA: TX			
8417086	F-08-075608	4210333240		103		T C BARNSLEY #3	LEA (SAN ANDRES)	5.5	WARREN PETROLEUM
-MCMURREY PETROLEUM INC				RECEIVED:	01/20/84	JA: TX			
8417020	F-03-073570	4204130970		102-4	103	CANDY HILL #1 RRC LEASE NO 16740	BRYAN	0.0	FERGUSON CROSSING
-MEWBOURNE OIL COMPANY				RECEIVED:	01/20/84	JA: TX			
8417103	F-10-075880	4229530614		103	107-TF	PEERY #2 ID #05161	PEERY (CLEVELAND)	30.0	TRANSWESTERN PIPE
8417102	F-10-075848	4235731356		103	107-TF	SWINK #1 ID #05387	DUTCHER (CLEVELAND)	6.0	TRANSWESTERN PIPE
-MITCHELL ENERGY CORPORATION				RECEIVED:	01/20/84	JA: TX			
8416925	F-09-019800	4249700000		108-ER		A E ALBRIGHT #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
8417197	F-09-076466	4249732574		103		ALVORD SOUTH (CADDO CONGL) #9-6	ALVORD SOUTH (CADDO C	8.3	NATURAL GAS PIPEL
8417068	F-09-075252	4249700000		108		ARDATH B ALLEN #1 042317	BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
8416938	F-7B-056601	4249700000		108-ER		BESSIE BOYD #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
8416928	F-7B-036060	4213300000		108-ER		C J OCONNOR #3	LEE RAY	0.0	LONE STAR GAS CO
8416950	F-09-065154	4249700000		108-ER		C R BRIDGES GU-A #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
8416946	F-09-064345	4249700000		108-ER		CHANDLER-DAVIS #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
8416937	F-09-053782	4249700000		108-ER		CHANDLER-DAVIS #2	BOONSVILLE	0.0	NATURAL GAS PIPEL
8417139	F-09-076133	4249700000		108		D P EVERETT #1 #021159	ALVORD (CADDO CONGL)	0.0	NATURAL GAS PIPEL
8417081	F-7B-075590	4236700000		108		F B BALLARD #1 102340	POOLVILLE SW (CONGL 4	0.0	CORONADO TRANSMIS
8417196	F-7C-076465	4245131261		102-4	103	FREYSCHLAG 220-A-#2	K W B (STRAWN)	8.3	ESPERANZA PIPELIN
8417058	F-7B-075039	4236700000		108		HAROLD MOORE #1 076592	LAKE MINERAL WELLS (4	0.0	NATURAL GAS PIPEL
8416949	F-09-065019	4249700000		108		HUDSON-KING #2 #077571	BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
8416958	F-7B-066311	4236700000		108		J T BAKER #3 093728	MINERAL WELLS N (BIS	0.0	CORONADO TRANSMIS
8416957	F-09-066309	4249700000		108-ER		JESSIE LOVELL #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
8416959	F-09-066315	4249700000		108		JOE C HANNA #1 #10127	BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
8416951	F-09-065156	4223700000		108		JOHNSON-CHERRYHOLMES #1 #047244	JACK COUNTY REGULAR (	0.0	NATURAL GAS PIPEL
8416936	F-09-053776	4249700000		108-ER		L F JONES #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
8416948	F-09-065001	4249700000		108		M L WAGGONER #24 #100082	BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
8417166	F-09-076259	4249700000		108		MARY REDDELL #1 028790	BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
8417109	F-7C-075904	4245131262		102-4	103	MCCARTY KRIST #1 570655	K W B (STRAWN)	8.2	ESPERANZA PIPELIN
8417067	F-03-075250	4208900000		108		MCDERMOTT #5 092142	NADA (2300)	0.0	TENNESSEE GAS PIP
8416944	F-09-063847	4249700000		108-ER		ORNEG STEWART #4	CUNDIFF SOUTH	0.0	NATURAL GAS PIPEL
8417005	F-7B-072740	4236700000		108		SARA JANE HOWARD #2 082433	LAKE MIN WELLS (4000	0.0	NATURAL GAS PIPEL
8417165	F-09-076257	4249700000		108		T J MEADOWS -A- #1 036084	BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
8416935	F-09-053775	4249700000		108-ER		T W WOMACK #4	BOONSVILLE	0.0	NATURAL GAS PIPEL
8417167	F-09-076261	4249700000		108		TARRANT CO WATER BOARD #18 035535	BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
8416967	F-09-067728	4249700000		108-ER		V D ROSS #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
8416926	F-09-028065	4223700000		108-ER		WILLIE R RICHARDS #2	CARY-MAG SOUTH	0.0	SOUTHWESTERN GAS
8416934	F-09-049185	4249700000		108-ER		WINFORD W CARTER #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	01/20/84	JA: TX			
8417080	F-08-075556	4222733077		103		CHALK ESTATE #19	HOWARD GLASSCOCK (GLO	0.4	PHILLIPS PETROLEU
8417142	F-08-076152	4237134499		103		IDA-STATE MONTGOMERY SEC 20 #1	HOKIT (PENNSYLVANIAN)	511.0	
8416987	F-08-071713	4232931188		103		PARKS FIELD UNIT 2 #2311	PARKS (FUSSELMAN)	203.0	EL PASO NATURAL G
8417195	F-08-076461	4210333235		103		SAND HILLS TUBB UNIT #54	SAND HILLS (TUBB)	6.6	WARREN PETROLEUM
8417182	F-08-076365	4230130428		102-4		W D JOHNSON 22-S #1	DIMMIT (CHERRY CANYON	4.4	INTRATEX GAS CO
-MOLE OPERATING COMPANY INC				RECEIVED:	01/20/84	JA: TX			
8417143	F-8A-076153	4211500000		102-4		S-12 BAPT FOUND OF TX #1	CHRISTINE (SPRAYBERRY	0.0	GETTY OIL CO
-MONSANTO COMPANY				RECEIVED:	01/20/84	JA: TX			
8417150	F-8A-076188	4207931776		103		MASTEN #40	LEVELLAND	13.0	CITIES SERVICE OI
-MOSELEY PETROLEUM CORP				RECEIVED:	01/20/84	JA: TX			
8417141	F-02-076151	4246932035		102-4		CRABTREE #1-T		0.0	HOUSTON PIPE LINE
-MR OIL CO				RECEIVED:	01/20/84	JA: TX			
8417172	F-08-076300	4249531558		103		UNIVERSITY 25 #3	WAR-WINK N (DELAWARE)	1500.0	TEXACO INC
-MUELLER ENGINEERING CORP				RECEIVED:	01/20/84	JA: TX			
8417062	F-04-075159	4213100000		103		HOWARD & ROGER WRIGHT #1	CHARAMOUSCA W (ROSENB	73.0	REATA INDUSTRIAL
-NORTH CENTRAL OIL CORPORATION				RECEIVED:	01/20/84	JA: TX			
8417024	F-7C-073643	4209530640		102-2	103	FRANK SMITH #1 #103453	S W PAINT ROCK	256.0	LONE STAR GAS CO
-NORTHERN NATURAL GAS PRODUCING CO				RECEIVED:	01/20/84	JA: TX			
8417181	F-10-076364	4217931398		103		DUNCAN SEC 135 #1	PANHANDLE GRAY COUNTY	14.6	NORTHERN NATURAL
-OIL CREEK ENERGY INC				RECEIVED:	01/20/84	JA: TX			
8417136	F-09-076101	4233700000		102-4		PIPKIN-RUTLEDGE UNIT #1	OIL CREEK (CADDO LIME	36.0	TEXAS UTILITIES F
-OXTEX INC				RECEIVED:	01/20/84	JA: TX			
8417021	F-04-073582	4204700000		108-ER		J L CAGE D #3	CAGE RANCH	0.0	TRUNKLINE GAS CO
-OZARK EXPLORATION INC				RECEIVED:	01/20/84	JA: TX			
8417105	F-7C-075894	4210534520		102-4	107-TF	JOE BEAN "D" #132	UNIVERSITY 31 (STRAWN	440.0	
8417104	F-7C-075893	4210534521		102-4	107-TF	JOE BEAN "E" #1-51	UNIVERSITY 31 (STRAWN	585.0	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-PALO PETROLEUM INC				RECEIVED:	01/20/84	JA: TX			
8416984	F-7C-071529	4238332439		102-2		MERTZ "4" #2	SPRABERRY (TREND AREA	0.0	EL PASO HYDROCARB
-PAN AMERICAN SALES CORP				RECEIVED:	01/20/84	JA: TX			
8417114	F-04-075935	4224731491		102-4		F G TREVINO ESTATE #1-A (107805)	TRAVIS WARD (WILCOX)	3650.0	VALERO TRANSMISSI
-PARKER & PARSLEY INC				RECEIVED:	01/20/84	JA: TX			
8417034	F-08-074065	4232900000		103		COLLINS "A" #1	SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
8417017	F-08-073267	4232900000		103		FASKEN "H" #1	SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
8417065	F-08-075193	4232900000		103		MABEE #1	SPRABERRY (TREND AREA	15.0	ADOBE OIL & GAS C
8417064	F-08-075192	4232900000		103		MABEE #2	SPRABERRY (TREND AREA	15.0	ADOBE OIL & GAS C
8417063	F-08-075191	4232900000		103		MABEE #3	SPRABERRY (TREND AREA	15.0	ADOBE OIL & GAS C
8417016	F-08-073263	4232900000		103		MURRAY "C" #1	SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
8417015	F-08-073262	4232900000		103		MURRAY "C" #2	SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
8417037	F-08-074193	4232900000		103		STIMSON-BURLEY "18" #1	SPRABERRY (TREND AREA	15.0	ADOBE OIL & GAS C
8417033	F-08-074058	4231731992		103		WOLCOTT "C" #1	BREEDLOVE SOUTH (SPRA	1.5	PHILLIPS PETROLEU
-PENNZOIL PRODUCING COMPANY				RECEIVED:	01/20/84	JA: TX			
8417145	F-04-076162	4235532121		103		HELEN P AUSTIN #4-F	AGUA DULCE (8100')	203.0	UNITED GAS PIPE L
-PETRO-BETH INC				RECEIVED:	01/20/84	JA: TX			
8417073	F-7B-075406	4208333667		103		BIRDWELL #1 (OIL)	WILLIAMS	31.0	UNION TEXAS PETRO
-PETRO-TECH INC				RECEIVED:	01/20/84	JA: TX			
8417202	F-06-076531	4200131430		102-2	103	MILLER FARMS #4	BOIS D'ARC (RODESSA)	73.0	ESPERANZA PIPELIN
-PETRUS OPERATING CO INC				RECEIVED:	01/20/84	JA: TX			
8417186	F-05-076411	4234933461		102-4		CARPENTER-ROWE UNIT #1	INGRAM TRINITY (RODES	0.0	DELHI GAS PIPELIN
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	01/20/84	JA: TX			
8416947	F-10-064952	4229531233		103		CRUISE E #2	BRADFORD CLEVELAND	0.0	TRANSWESTERN PIPE
8417179	F-08-076335	4238931417		102-4		ORLA-A #1	JESS BURNER (DELAWARE	47.0	
8417128	F-10-076060	4242100000		108		RINEMILL #1	TEXAS HUGOTON-DOLOMIT	0.0	PANHANDLE EASTERN
-PICKARD & KIRKPATRICK OIL CO				RECEIVED:	01/20/84	JA: TX			
8417050	F-02-074905	4217531655		102-4		SPANGLE #1 (N/A)	MARSHALL S W	146.0	DELHI GAS PIPELIN
-PIONEER PRODUCTION CORPORATION				RECEIVED:	01/20/84	JA: TX			
8416989	F-10-071866	4239330946		102-3	103	PAYNE #1	RFC (MORROW UPPER)	0.0	WESTAR TRANSMISSI
-PRAIRIE PRODUCING CO				RECEIVED:	01/20/84	JA: TX			
8417055	F-03-074995	4224130299		102-4		KIRBY LUMBER CO #1	GIST WEST (6700 FB-1)	365.0	
-PRECISION DRILLING CO INC				RECEIVED:	01/20/84	JA: TX			
8416956	F-7C-066163	4239932484		103		M S HALE #2 00226	BERNARD	14.4	LONE STAR GAS CO
-PRUDENTIAL DRILLING CO				RECEIVED:	01/20/84	JA: TX			
8417146	F-03-076168	4224531648		102-4		WILBER UNIT #1	BIG HILL N W (NODOSAR	730.0	WINNIE PIPELINE C
-PURE ENERGY CO				RECEIVED:	01/20/84	JA: TX			
8416970	F-03-069310	4247300000		102-4		KENNETH P SHULTE #1 - #104474	BROOKSHIRE CAT	1825.0	TEJAS-SOUTHWESTER
-PYRON EXPLORATION & DRILLING CORP				RECEIVED:	01/20/84	JA: TX			
8417003	F-7B-072549	4242933687		103		DOUGLAS #1	STEPHENS COUNTY REGUL	73.0	BRAZOS ELECTRIC P
-QUANAH DRILLING & EXPLORATION INC				RECEIVED:	01/20/84	JA: TX			
8417085	F-7B-075628	4236732407		102-4		BRUMBAUGH #1	GROGAN (1300)	47.0	TEXAS UTILITIES F
-R A W ENERGY CORP				RECEIVED:	01/20/84	JA: TX			
8417028	F-7B-073853	4236333151		102-4		A RITCHIE #1	POSSUM KINGDOM (BEND	200.0	
8417125	F-7B-076017	4236333207		102-4		HOPKINS #1	FORUM (BEND CONGL)	300.0	SOUTHWESTERN GAS
-R K G ENGINEERING INC				RECEIVED:	01/20/84	JA: TX			
8417171	F-08-076289	4217300000		102-4		BOOKS #1	BOOKS (STRAWN)	0.0	UNION TEXAS PETRO
-RANSONE EXPL CO/ROBERT RANSON INC				RECEIVED:	01/20/84	JA: TX			
8417088	F-7B-07566	4205934341		102-4		SEALY-SMITH FOUNDATION #2 (OIL)	PARROTT (ELLENBURGER)	20.0	
-REISS ROYAL W				RECEIVED:	01/20/84	JA: TX			
8417192	F-7B-076441	4213334395		103		L A LOWRANCE #3 (GAS)	EASTLAND COUNTY REGUL	14.0	LONE STAR GAS CO
-RICHARD W THOMPSON INC				RECEIVED:	01/20/84	JA: TX			
8417031	F-7B-074026	4244733603		102-4		DAWS #2	JOE & GRADY DAWS	73.0	HASKELL GATHERING
-RISEDEN LTD				RECEIVED:	01/20/84	JA: TX			
8417169	F-02-076265	4205700000		102-4		W CERVENKA UNIT #1	SEE W (6310) FIELD	38.0	FLORIDA GAS TRANS
-ROBERTS & HAMMACK INC				RECEIVED:	01/20/84	JA: TX			
8416960	F-7C-066348	4246131920		103		ELKIN	CALVIN (DEAN)	60.0	PHILLIPS PETROLEU
-ROME EXPLORATION CO INC				RECEIVED:	01/20/84	JA: TX			
8416976	F-01-070153	4250700000		102-4		H & F PROPERTIES SECTION 24 #2	CRYSTAL CITY (BRACERO	0.0	VALERO TRANSMISSI
-ROYAL OIL & GAS CORPORATION				RECEIVED:	01/20/84	JA: TX			
8416997	F-01-072371	4231100000		102-4	103	DAN FOSTER #1A	A W P (OLMOS)	85.0	HOUSTON PIPE LINE
-SABIO OIL & GAS INC				RECEIVED:	01/20/84	JA: TX			
8416930	F-09-044294	4249700000		108-ER		FANNIE M KNOX #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
8416931	F-09-044295	4249700000		108-ER		P H STONE #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
-SAN PATRICIO CORP				RECEIVED:	01/20/84	JA: TX			
8417013	F-01-073182	4212700000		102-4	103	SETH WOODS #1-T	EVERGREEN FARMS (3RD	91.3	CORPUS CHRISTI GA
8417012	F-01-073181	4212700000		102-4	103	SETH WOODS #1C	EVERGREEN FARMS (3RD	147.8	CORPUS CHRISTI GA
-SAXON OIL COMPANY				RECEIVED:	01/20/84	JA: TX			
8417038	F-8A-074246	4226300000		103		HAMLIN "B" #1	WALLACE RANCH NE (NOO	0.0	
-SCHRIMSHER EXPLORATION LTD				RECEIVED:	01/20/84	JA: TX			
8417144	F-08-076157	4243131318		102-4		J C REED #1-9	STERLING N	16.0	
-SERENDIPITY EXPLORATION INC				RECEIVED:	01/20/84	JA: TX			
8417176	F-7B-076305	4236732607		102-4		JONES ESTATE #1	DENNIS WEST (STRAWN)	90.0	NORTHERN GAS PROD
-SHA JAM OPERATING CORP				RECEIVED:	01/20/84	JA: TX			
8416985	F-03-071606	4228731336		102-2		BARBARA RUE #1	GIDDINGS (AUSTIN CHAL	219.0	PHILLIPS PETROLEU
8417042	F-7B-074598	4214330785		102-4		DIANE MARIE #1	LEDBETTER (MARBLE FAL	45.6	LONE STAR GAS CO
-SHELL OIL CO				RECEIVED:	01/20/84	JA: TX			
8417204	F-04-076551	4213136289		102-4		J F WELDER HEIRS #2	BOLD FORBES (CARRIZO	400.0	
8417111	F-01-075908	4231131905		102-4		L S MCCLAUGHERTY "A" #5	A W P (OLMOS)	100.0	HPI TRANSMISSION
-SPOOL OIL CO				RECEIVED:	01/20/84	JA: TX			
8416942	F-10-061629	4223300000		108-ER		TARBOX #4	PANHANDLE HUTCHINSON	0.0	PHILLIPS PETROLEU
-STAHL PETROLEUM CO				RECEIVED:	01/20/84	JA: TX			
8416962	F-10-066401	4248330895		108		LULA #1-A	EAST PANHANDLE	0.0	TRANSWESTERN PIPE
8416961	F-10-066400	4248330812		108		WOODRUFF #1	EAST PANHANDLE	0.0	TRANSWESTERN PIPE
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	01/20/84	JA: TX			
8417057	F-08-075033	4233532071		103		B ANDERSON "A" #9	JAMESON NORTH	32.0	LONE STAR GAS CO
8416941	F-09-061185	4249700000		108-ER		HENRY KELLEY UNIT #2	BOONSVILLE	0.0	NATURAL GAS PIPEL
8417040	F-03-074562	4207100000		108		STATE TRACT 307 #3	RED FISH REEF S W	13.0	UNITED TEXAS TRAN
-SUPERIOR OIL CO				RECEIVED:	01/20/84	JA: TX			
8417025	F-02-073803	4228531735		103	107-TF	FRED MELNAR ESTATE UNIT #3	WORD (EDWARDS)	300.0	UNITED TEXAS TRAN
-TANA OIL & GAS CORP				RECEIVED:	01/20/84	JA: TX			
8417006	F-01-072760	4228330950		102-4		J C MARTIN #1	SUN TSH	200.0	VALERO TRANSMISSI
-TEMPLETON CO				RECEIVED:	01/20/84	JA: TX			
8417049	F-7C-074764	4239931571		102-4		JAMES R CURTIS #1	GERLACH (ELLENBERGER)	175.0	UNION TEXAS PETRO
-TENNECO OIL COMPANY				RECEIVED:	01/20/84	JA: TX			
8417056	F-04-075013	4235531319		103		EAST SIDE BLOCK UNIT 10 ID $N/A	AGUA DULCE (8100)	90.0	TENNECO OIL CO
-TEON ENERGY INC				RECEIVED:	01/20/84	JA: TX			
8416996	F-03-07236	4205132170		102-2		FALKENBERG "C" -2- #2	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
-TEPCO ENGINEERING INC				RECEIVED:	01/20/84	JA: TX			
8416979	F-02-070426	4202532000		102-4	103	H A HUGHES WELL #1	MALONE RANCH (PETTUS	146.0	SOUTHERN GAS PIPE
-TEXACO INC				RECEIVED:	01/20/84	JA: TX			
8417112	F-8A-075920	4216532426		103		J B ROBERTSON #59	ROBERTSON N (CLEARFOR	0.0	PHILLIPS PETROLEU
8417096	F-8A-075740	4216532624		103		J H SYLER #9	ROBERTSON N (CLEARFOR	13.9	PHILLIPS PETROLEU
8417044	F-09-074640	4218100000		108		LEAFY KLAS #1	BIG MINERAL S E (V SA	4.0	UNION TEXAS PETRO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8417177	F-8A-076310	4221934087		103		MONTGOMERY ESTATE-DAVIES NCT-2 #109	LEVELLAND	17.9	AMOCO PRODUCTION
8417097	F-8A-075755	4221934083		103		MONTGOMERY ESTATE-DAVIES NCT-2 #114	LEVELLAND	15.0	AMOCO PRODUCTION
8417010	F-08-072955	4238931404		102-4		REEVES "AD" FEE #3	JESS BURNER	35.4	CONOCO INC
8417060	F-08-075109	4243131381		103		STERLING "M" FEE #4	CONGER (PENN)	0.0	VALERO TRANSMISSI
8417086	F-08-075644	4243131373		102-4		STERLING "I" FEE #8	CONGER SW	0.0	VALERO TRANSMISSI
8417101	F-8A-075837	4216532550		103		WHARTON UNIT #119	HARRIS	11.3	PHILLIPS PETROLEU
8417095	F-8A-075739	4216532665		103		WHARTON UNIT #139	HARRIS	49.3	PHILLIPS PETROLEU
8417168	F-8A-076263	4216532666		103		WHARTON UNIT #140	HARRIS	11.3	PHILLIPS PETROLEU
-TEXCOLADA OIL CO				RECEIVED:	01/20/84	JA: TX			
8417133	F-7B-076081	4213331151		102-4		A E HENSLEE #2	TIN CUP	50.0	NORTHERN GAS PROD
8417132	F-7B-076078	4213331894		102-4		BOWEN WALTON #1	TIN CUP	20.0	NORTHERN GAS PROD
8417134	F-7B-076087	4214300000		108		FRED HUFFMAN #1	DESDEMONA E	21.0	NORTHERN GAS PROD
8417131	F-7B-076075	4213331445		102-4		HENSLEE "A" #3	TIN CUP	30.0	NORTHERN GAS PROD
-THOMPSON J CLEO & JAMES CLEO JR				RECEIVED:	01/20/84	JA: TX			
8416994	F-7C-072270	4210534472		103		INGHAM "C" #1	INGHAM (DEVONIAN)	790.0	
8416968	F-7C-068733	4210500000		107-TF		UNIVERSITY 30-7W #2	UNIVERSITY 31 (STRAWN	0.0	PHILLIPS PETROLEU
-THROCKMORTON GAS SYSTEMS				RECEIVED:	01/20/84	JA: TX			
8416929	F-7B-038908	4244700000		102-4		R A BROWN "Q" #5 (05056)	VAIDA (CADDO)	0.0	WARREN PETROLEUM
-TOM BROWN INC				RECEIVED:	01/20/84	JA: TX			
8417098	F-7C-075757	4243533001		103	107-TF	HILL-MRS MAY M RAY "H" #1	ALDWELL (RANCH) CANYO	73.0	LONE STAR GAS CO
-TOM MCGEE CORP				RECEIVED:	01/20/84	JA: TX			
8417023	F-10-073637	4229531297		107-TF		DICKINSON #1	PEERY (CLEVELAND)	365.0	DIAMOND CHEMICALS
-TXO PRODUCTION CORP				RECEIVED:	01/20/84	JA: TX			
8416965	F-06-067428	4240131221		102-4		BOLTON "A" #4	MINDEN (TRAVIS PEAK 8	361.0	DELHI GAS PIPELIN
8417185	F-08-076389	4238900000		103		BURNER #1	JESS BURNER	15.0	CONOCO INC
8416973	F-10-069726	4235731274		103		DANIEL "E" #1	DANIEL	270.0	DELHI GAS PIPELIN
8416992	F-04-072154	4235500000		103		DRYDEN #1	EAST STRATTON (MIDDLE	0.0	DELHI GAS PIPELIN
8417070	F-7C-075320	4223500000		103		LINDLEY "40" #8	ROCK PEN (CANYON)	75.0	NORTHERN NATURAL
8416969	F-10-069081	4229531252		102-4		METHODIST HOME #2	D G	292.0	DELHI GAS PIPELIN
8417001	F-02-072543	4223931843		102-4		MOORE J-1	MORALES (3480)	0.0	DELHI GAS PIPELIN
8416998	F-02-072389	4223900000		102-4		POWERS G-1	MORALES (4410)	0.0	DELHI GAS PIPELIN
8417018	F-06-073348	4206730425		102-4		SIMPSON "D" #4	AVINGER (PETTIT)	0.0	DELHI GAS PIPELIN
8417178	F-10-076326	4235731444		102-4		SPICER #3	BOOKER N (MORROW UPPE	360.0	DELHI GAS PIPELIN
8416966	F-06-067698	4240131346		102-4		TEXAS UTILITIES #1	LANEVILLE NE (PETTIT	0.0	DELHI GAS PIPELIN
8416999	F-7B-072417	4241735194		102-4		WALKER-BUCKLER 79 #2	ROCKWELL (PALO PINTO)	30.0	DELHI GAS PIPELIN
8417002	F-02-072545	4223931637		102-4		WATSON B-2	MORALES (4260)	0.0	DELHI GAS PIPELIN
8416971	F-10-069644	4229531257		103		YAUCK #1	FOLLETT WEST	300.0	DELHI GAS PIPELIN
-UNION OIL COMPANY OF CALIF				RECEIVED:	01/20/84	JA: TX			
8417127	F-08-076049	4200333586		103		DOLLARHIDE UNIT #14-23-C	DOLLARHIDE (CLEAR FOR	10.0	DOLLARHIDE GASOLI
8417126	F-08-076048	4200333584		103		DOLLARHIDE UNIT #14-24-C	DOLLARHIDE (CLEAR FOR	15.0	DOLLARHIDE GASOLI
8417193	F-08-076451	4200333676		103		DOLLARHIDE UNIT #8-25-C	DOLLARHIDE (CLEAR FOR	30.0	DOLLARHIDE GASOLI
-UNITED PETROLEUM CORP				RECEIVED:	01/20/84	JA: TX			
8417135	F-10-076091	4223331699		103		CROSBY-HATCHER "B" #1	PANHANDLE-HUTCHINSON	54.0	DIAMOND CHEMICALS
-VERNON E FAULCONER INC				RECEIVED:	01/20/84	JA: TX			
8417019	F-06-073567	4240100000		108-ER		BURTON #1 GAS UNIT #039429	OAKHILL (TRAVIS PEAK)	0.0	LONE STAR GAS CO
-VORTT EXPLORATION CO INC				RECEIVED:	01/20/84	JA: TX			
8417039	F-7B-074284	4236300000		102-4		MURPHY-STONE UNIT WELL #1	MINERAL WELLS SOUTH (	0.0	SOUTHWESTERN GAS
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	01/20/84	JA: TX			
8417089	F-08-075685	4210333194		103		W N WADDELL ETAL (TRA) #1285	SAND HILLS (TUBB)	193.6	EL PASO NATURAL G
8417090	F-08-075686	4210333192		103		W N WADDELL ETAL (TRA) #1287	SAND HILLS (TUBB)	28.2	EL PASO NATURAL G
-WESLEY SENKEL INC				RECEIVED:	01/20/84	JA: TX			
8417189	F-09-076437	4250336446		103		SENKEL-HAWKINS #A-1	LANGSTON-KLIENER (STR	0.0	MID-STATE GAS COR
8417190	F-09-076438	4250337218		103		SENKEL-HAWKINS #A-3	LANGSTON-KLEINER (STR	0.0	MID-STATE GAS COR
8417191	F-09-076439	4250337318		103		SENKEL-HAWKINS #A-4	LANGSTON-KLEINER (STR	0.0	MID-STATE GAS COR
-WICHITA INDUSTRIES INC				RECEIVED:	01/20/84	JA: TX			
8417116	F-7B-075945	4242932969		103		PETER SWENSON #53	STEPHENS COUNTY REGUL	36.5	WARREN PETROLEUM
8417115	F-7B-075914	4242933523		102-4		PETER SWENSON #56	SMOKEN-HAG	54.7	WARREN PETROLEUM
-WILLIAMS OIL CO				RECEIVED:	01/20/84	JA: TX			
8417149	F-08-076178	4249531615		103		MCCUTCHEN #1	KEYSTONE (COLBY)	91.0	CABOT PIPELINE CO
-WILSON ENERGY INC				RECEIVED:	01/20/84	JA: TX			
8417173	F-08-076301	4232931199		102-4		EVELYN KOONCE #1	BETTY SUE (STRAWN)	77.0	PHILLIPS PETROLEU
8417175	F-7C-076304	4210533988		103		UNIVERSITY 8 "B" 6 "G"	FARMER (SAN ANDRES)	9.0	J L DAVIS
8417174	F-7C-076303	4210533987		103		UNIVERSITY 8 "B" 8 "G"	FARMER (SAN ANDRES)	10.0	J L DAVIS
-WOLSEY OIL INC				RECEIVED:	01/20/84	JA: TX			
8417152	F-09-076206	4223700000		107-PE		J B CLAY "D" 045892	PLEMONS CONGLOMERATE	20.0	LONE STAR GAS CO
-WOOD MCSHANE & THAMS				RECEIVED:	01/20/84	JA: TX			
8417106	F-08-075897	4249531628		103		KEYSTONE CATTLE #11-C RRC #27106	KEYSTONE (COLBY)	12.3	WESTAR TRANSMISSI
-WOOLF & MAGEE INC				RECEIVED:	01/20/84	JA: TX			
8417188	F-03-076427	4237330554		102-4		JACK DILLON #1	DALLARDSVILLE (WILCOX	176.0	HOUSTON PIPELINE

[FR Doc. 84-4685 Filed 2-21-84; 8:45 am]

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federal register

Wednesday
February 22, 1984

Part V

Department of Education

34 CFR Part 690

Pell Grant Program; Cost of Attendance; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program; Cost of Attendance

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is issuing final regulations governing the calculation of student's cost of attendance for the Pell Grant Program for the 1984–85 award year. These regulations are based upon Section 4 of the Student Loan Consolidation and Technical Amendments Act of 1983, Pub. L. 98–79. This regulation will affect the institution's calculation of room and board for students who do not reside at home or in institutionally owned or operated housing. This will increase the cost of attendance for these students, thus increasing their scheduled awards.

EFFECTIVE DATE: These regulations take effect 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. When these regulations become effective, they will apply to Pell Grant awards made for the 1984–85 award year (beginning July 1, 1984).

FOR FURTHER INFORMATION CONTACT: Brian Kerrigan, Chief, Pell Grant Policy Section or Gail Cornish, Pell Grant Program Specialist, Office of Student Financial Assistance, ROB–3, Room 4318, 400 Maryland Avenue, S.W., Washington, D.C. 20202, Telephone (202) 472–4300.

SUPPLEMENTARY INFORMATION: Section 4 of the Student Loan Consolidation and Technical Amendments Act of 1983, Pub. L. 98–79, provides that, with one exception, the cost of attendance criteria used for calculating Pell Grant awards for the 1983–84 award year shall be used to calculate such awards for the 1984–85 award year. The exception covers the room and board allowance for students who neither reside at home nor in institutionally owned or operated housing.

For the 1983–84 award year, the room and board allowance for these students is $1,100. However, for the 1984–85 award year, institutions which these students are attending will have some discretion in determining that allowance. Institutions are to establish a standard allowance based on the expenses reasonably incurred by these students for room and board costs which shall be at least $1,100 but not more than $1,600.

In order to fully implement this new provision, changes have been made to cover the situation where a student contracts with the institution for room or board. For the 1983–84 award year, students contracting with the institution solely for board receive a $475 room allowance. Conversely, students contracting with the institution solely for a room, receive a $625 board allowance. For the 1984–85 award year, a student contracting with the institution solely for board will receive a room allowance equal to 40 percent of the standard allowance of between $1,100 and $1,600 developed by the institution for room and board, while students contracting with the institution solely for a room will receive a board allowance equal to 60 percent of that standard allowance. These percentages maintain the proportional relationship between room and board costs in the existing regulation since the $475 room allowance in the existing regulation is approximately 40 percent of the $1,100 room and board allowance while the $625 board allowance is approximately 60 percent of that room and board allowance.

For example, if a student contracts with an institution for room, but does not contract for board, and the standard allowance determined by the institution for room and board is $1,400, the room and board for this student for the 1984–85 award year would be $840 for board expenses (i.e. 60 percent of $1,400) plus the contracted amount for room.

Finally, for a student who contracts with the institution for board for less than 7 days a week, a daily board rate will be computed for the student based on 60 percent of the standard amount established by the institution for room and board. Thus to continue the previous example, if sixty percent of the standard amount is $840 and the academic year consists of 280 days, the daily rate for board would be $3 ($840 divided by 280). This daily rate would then be multiplied by the number of days in the academic year that are not covered by the board contract, and the result would be added to the contracted amount for board. Assuming the contracted amount for board is $700 for the academic year, and the contract provides for three meals a day for 200 days, the number of days not covered by contract would be 80 (280 minus 200). Eighty multiplied by the daily rate of $3 equals $240. Thus the allowance for board in this example is $940 ($240 + $700).

To further simplify these regulations, § 690.56—"Attendance costs for students who are charged for a program whose length is less then the academic year"—has been deleted and combined with § 690.55 to read—"Attendance costs for students are charged for a program whose length is greater than or less than an academic year." The components of both of these sections were the same, therefore a consolidation simplifies the regulations.

Executive Order 12291

These regulations have been reviewed by the Department 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 a significant economic impact on a substantial number of small entities. These regulations will only affect the determination of a student's cost of attendance and the amount of the Pell Grant award a student receives. They will not have an impact on small entities as defined in the Act.

Waiver of Notice of Proposed Rulemaking

Section 4 of Pub. L. 98–79 specifies that, with one exception, the cost of attendance criteria used to calculate grants in award year 1983–84 for the Pell Grant Program shall be used for that purpose for award year 1984–85. The exception, i.e. the allowance for room and board for students who neither live at home nor in institutionally owned or operated housing, is also quite specific in the statute. Further, the proportional relationship between room and board costs is maintained in the situation where a student contracts only for a room or only for board. Therefore, since the regulations merely restate the law and establish no new substantive policy, the Secretary has determined that resort to proposed rulemaking in this instance is unnecessary within the meaning of 5 U.S.C. 553(b).

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.063, Pell Grant Program)

Dated: February 15, 1984.

T. H. Bell,

Secretary of Education.

The Secretary amends Part 690 of Title 34 of the Code of Federal Regulations as set forth below:

1. Subpart E of the Table of Contents of Part 690 is revised to read as follows:

PART 690—PELL GRANT PROGRAM

Subpart E—Cost of Attendance

Sec.
690.51 Allowable costs of attendance—general.
690.52 Tuition and fees.
690.53 Room and board.
690.54 Attendance costs for students in correspondence study programs.
690.55 Attendance costs for students who are charged for a program whose length is greater than or less than an academic year.
690.56 Attendance costs for incarcerated students.
690.57 Attendence costs for students at U.S. Armed Forces Academies.

2. Subpart E of Part 690 is revised to read as follows:

Subpart E—Costs of Attendance

§ 690.51 Allowable costs of attendance—general.

(a) Except as provided in §§ 690.54–690.57, a student's cost of attendance means—

(1) The tuition and fees charged to a full-time undergraduate student for an academic year by the institution he or she is attending as determined under § 690.52;

(2) Room and board costs for an academic year as determined under § 690.53; and

(3) An allowance of $400 for books, supplies, and miscellaneous expenses for an academic year.

(b) An institution must be able to justify and document the cost of attendance figures established under this subpart.

(Sec. 4 of Public Law 98–79)

§ 690.52 Tuition and Fees.

(a)(1) An institution shall determine the tuition and fees charged a full-time undergraduate student by calculating either—

(i) The actual amount it charges each full-time undergraduate student for tuition and fees for an academic year, or

(ii) The average amount it charges full-time undergraduate students for tuition and fees for an academic year.

(2) However, the institution must use the option it selects under paragraph (a)(1) of this section to determine the tuition and fee charges of all its students under this part.

(b) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculate an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(c) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(Sec. 4 of Public Law 98–79)

§ 690.53 Room and board.

The institution shall determine a student's room and board costs for an academic year as follows—

(a) For a student who enters into a contract with the institution for room and/or board, the institution shall choose one of the following cost options but must use the option it selects for all students. The two options are:

(1) The actual amount it charges each student for:

(i) Room and board for an academic year,

(ii) Room only, plus an allowance equal to 60 percent of the standard allowance established by the institution in paragraph (b)(2) of this section, for board for an academic year, or

(iii) Board only, plus an allowance equal to 40 percent of the standard allowance established by the institution in paragraph (b)(2) of this section, for room for an academic year, or

(2) The average amount it charges most students for:

(i) Room and board for an academic year,

(ii) Room only, plus an allowance equal to 60 percent of the standard allowance established by the institution in paragraph (b)(2) of this section, for board for an academic year, or

(iii) Board only, plus an allowance equal to 40 percent of the standard allowance established by the institution in paragraph (b)(2) of this section, for room for an academic year.

(b) For a student who does not enter into a contract with the institution for either room or board, the student shall receive—

(1) An allowance of $1,100 for an academic year if he or she lives in the home of his or her parents, or

(2) An allowance of at least $1,100 but not more than $1,600 for an academic year if he or she does not live in the home of his or her parents. This amount shall be a standard amount determined by the institution based upon the expenses reasonably incurred by such students, and shall apply to all students covered under this subparagraph.

(c) If a student enters into a contract with the institution for board for less than 7 days a week, a daily rate will be computed based upon an allowance of 60 percent of the standard amount established by the institution in paragraph (b)(2) of this section and used for those days of the academic year not covered by the contract. This amount will be added to the cost established under paragraph (a)(1) or (a)(2) of this section.

(Sec. 4 of Public Law 98–79)

§ 690.54 Attendance costs for students in correspondence study programs.

The cost of attendance for a student enrolled in a correspondence study program means—

(a) Actual tuition and fees charged to the student for an academic year; and

(b) If incurred in fulfilling a required period of residential training, room and board costs based on—

(1) The actual amount charged to the student by the institution; or

(2) The standard allowance established in § 690.53(b) prorated in the same ratio as the course work completed in residential training bears to the course work for the academic year.

(Sec. 4 of Public Law 98–79)

§ 690.55 Attendance costs for students who are charged for a program whose length is greater than or less than an academic year.

The cost of attendance for a student who is charged tuition and fees for a program whose length is greater than or less than the length of the academic year at the institution, is determined by adding—

(a)

$$\text{Tuition and fees} \times \frac{\text{clock or credit hours in the academic year}}{\text{clock or credit hours in the program}}$$

and

(b) Room and board costs as determined under § 690.53; and

(c) An allowance of $400 for books, supplies and miscellaneous expenses.

(Sec. 4 of Public Law 98–79)

§ 69.56 Attendance costs for incarcerated students.

(a) The cost of attendance for a student who is incarcerated for whom at least one-half of his or her room and board expenses is provided includes—

(1) Tuition and fees as determined under § 690.52; and

(2) An allowance of $150 for books and supplies.

(b) The cost of attendance for a student who is incarcerated and for whom less than one-half of his or her room and board expenses is provided is the same as that allowed for a student who is not incarcerated.

(Sec. 4 of Public Law 98–79)

§ 690.57 Attendance costs for students at U.S. Armed Forces Academies.

A student enrolled at the U.S. Military Academy at West Point, the U.S. Naval Academy, the U.S. Air Force Academy or the U.S. Coast Guard Academy is considered to have no cost of attendance.

(Sec. 4 of Public Law 98–79)

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 172
Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame; Denial of Requests for Hearing; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket Nos. 75F-0355 and 82F-0305]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Denial of requests for hearing; final rule-related.

SUMMARY: The Food and Drug Administration (FDA) is denying the requests for a hearing on certain safety issues related to the amendment to the food additive regulation concerning aspartame that provides for the safe use of the substance in carbonated beverages and carbonated beverage syrup bases. After reviewing the objections to the amendment and the requests for a hearing, FDA has concluded that the objections do not raise issues of material fact that justify granting a hearing on a food additive regulation.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-427-5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

Aspartame (*N*-*L*-α-aspartyl-*L*-phenylalanine 1-methyl ester) is the nutritive methyl ester of a dipeptide formed from phenylalanine and aspartic acid. G. D. Searle & Co., 4901 Searle Parkway, Skokie, IL 60077, originally petitioned in 1973 for approval of its use as a sweetener and flavor enhancer in dry foods. FDA approved the petition in a final regulation published in the **Federal Register** of July 26, 1974 (39 FR 27317), and codified at 21 CFR 172.804.

FDA received formal objections to this regulation and requests for a hearing to investigate certain alleged toxic effects of aspartame. FDA granted the request for a hearing and established a Public Board of Inquiry (the Board), nominated from scientists outside the agency, to hear expert testimony and evaluate the scientific issues raised in the objections. Subsequently, FDA stayed the regulation (40 FR 56907; December 5, 1975) and delayed the Board's convening while an extensive audit of the authenticity of certain toxicological studies on aspartame was conducted. Of the 15 pivotal studies, 3 were reviewed by an FDA task force and 12 by scientists from Universities Associated for Research and Education in Pathology, Inc. (UAREP), a consortium of 9 universities. Following the finding by UAREP that the animal studies were authentic, the Board convened a public hearing; it completed the hearing and issued its report in 1980 (Aspartame, Decision of the Public Board of Inquiry, Docket No. 75F-0355) (Board's decision).

In the **Federal Register** of July 24, 1981 (46 FR 38285), the Commissioner of Food and Drugs reviewed the Board's conclusions and announced his final decision that aspartame was safe within the meaning of section 409(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)). The Commissioner specifically determined that, on the basis of available data, aspartame consumption would not cause brain damage such as mental retardation, brain lesions, or endocrine dysfunction, nor would it cause brain tumors. FDA then reinstated the original regulation (46 FR 50947; October 16, 1981), approving aspartame for the following uses as a sweetener: dry sugar substitutes in free-flowing and tablet form; cold cereals; chewing gum; and dry bases for beverages, instant coffees and teas, puddings and gelatins, and dairy analog toppings (21 CFR 172.804(c)). None of the parties who originally requested a hearing on the regulation objected to or sought judicial review of the agency's final decision to reinstate the regulation approving the dry uses of aspartame.

II. Aspartame For Use In Carbonated Beverages

A. Regulation Approving Use

In the **Federal Register** of July 8, 1983 (48 FR 31376), FDA issued a final rule that amended § 172.804 by adding new paragraph (c)(6) to permit the additional use of aspartame as a sweetener in carbonated beverages and carbonated beverage syrup bases. That regulation responded to a petition filed by G. D. Searle & Co. (47 FR 46140; October 15, 1982). Before approving this new use, the agency reviewed, among other safety issues, the potential neurotoxicity of the components and decomposition products of aspartame, the stability of aspartame in carbonated beverages, and the potential impact on health of increased consumption of aspartame resulting from its additional use in carbonated beverages.

In the preamble to the final rule, FDA also considered and responded to a number of safety issues raised in comments on the carbonated beverage petition (48 FR 31376 at 31378-31381). These comments expressed particular concern about potential adverse effects of aspartame's component amino acids on the brain, and the potential for exposure to toxic levels of decomposition products, including methanol, from aspartame's use in carbonated beverages. FDA based its approval of aspartame for use in carbonated beverages on its evaluation of clinical studies which were submitted by the petitioner to supplement animal study data supplied with the dry uses petition, data from other relevant studies in the scientific literature, and data contained in comments submitted on the petition (*id.*). These data are all included in the administrative record of Docket No. 82F-0305.

B. Objections and Requests for a Hearing and a Stay

Two objections were filed to the July 8, 1983 regulation approving the use of aspartame in carbonated beverages. The objections contended that numerous safety issues had not been adequately considered by the agency before the promulgation of the regulation, and requested that the regulation be stayed pending examination of those issues in a public hearing. The two parties objecting to the regulation on the basis of unresolved safety issues were James S. Turner, 1424 16th St. NW., Washington, DC 20036, objecting on behalf of himself and the Community Nutrition Institute, 1146 19th St. NW., Washington, DC 20036; and Woodrow C. Monte, Director, Food Science and Nutritional Laboratories, Arizona State University, Tempe, AZ. In addition, Richard J. Wurtman, Massachusetts Institute of Technology, Cambridge, MA, commented on the regulation, but did not request a hearing or a stay of the regulation. Before publication of the final rule approving the use of aspartame in carbonated beverages, Dr. Wurtman wrote a series of letters to FDA in which he expressed his concern about potential adverse effects on brain function of ingesting high levels of carbohydrate and aspartame, and reported the results of some experiments conducted in his laboratory.

FDA denied the requests to stay the effectiveness of the carbonated beverage regulation (48 FR 52899; November 23, 1983), because the public interest did not require it. FDA briefly evaluated each contention of the objections, and concluded that they failed to create doubts about the safety of aspartame significant enough to stay the regulation approving the use of aspartame in carbonated beverages. In that document, FDA also confirmed July 8, 1983, as the effective date of the

regulation authorizing the use of aspartame in carbonated beverages.

C. Standard for Granting a Hearing and Character of the Objections

Section 409(f) of the act provides that any person adversely affected by a final food additive regulation may file objections, specifying with particularity the provisions of the order "deemed objectionable, stating reasonable grounds therefor," and request a public hearing based upon such objections. However, the Commissioner may deny the hearing request if the objections to the regulation do not raise genuine and significant issues of fact that can be resolved at a hearing. Specific criteria for determining whether a request for a hearing has been justified are codified at 21 CFR 12.24(b). The pertinent criteria in 21 CFR 12.24(b) for granting a hearing are:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issues can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought * * *.

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing." *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214–215 (1980) *reh. den.* 446 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–621 (1973). An allegation that a hearing is necessary to "sharpen the issues" or "fully develop the facts" does not meet this test. *Georgia Pacific Corp.* v. *U.S. E.P.A.*, 671 F.2d 1235, 1241 (9th Cir. 1982). If a hearing request fails to identify any evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, courts are authorized to issue summary judgment without an evidentiary hearing whenever they find that there are no material issues of fact in dispute and a party is entitled to judgment as a matter of law. See Rule 56, Federal Rules of Civil Procedure. The same principle applies in administrative proceedings.

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact concerning which a meaningful hearing might be held. *Pineapple Growers Association* v. *FDA*, 673, F.2d 1083, 1085 (9th Cir. 1982) (where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing). *Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959) *cert. denied*, 362 U.S. 911 (1960). FDA need not grant a hearing in each case where an objection submits additional information or posits a novel interpretation of existing information. See *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971). Stated another way, a hearing is justified only if the objections are made in good faith and if they "draw in question in a material way the underpinnings of the regulation at issue." *Pactra Industries* v. *CSPC*, 555 F.2d 677 (9th Cir. 1977). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. See *Citizens for Allegan County, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.*, v. *FPC*, 256 F.2d 233, 240 (5th Cir.), *cert. denied*, 358 U.S. 872 (1958).

Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in the earlier aspartame proceeding leading to the approval of aspartame for dry uses. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. It is illogical not to recognize that the various judicial doctrines dealing with finality can be validly applied to the administrative process. In explaining why these principles "self-evidently" ought to apply to an agency proceeding, the D.C. Circuit wrote:

The underlying concept is as simple as this: Justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity.

Retail Clerks Union, Local 1401, R.C.I.A., v. *NLRB*, 463 F.2d 316, 322 (D.C. Cir. 1972). See *Costle* v. *Pacific Legal Foundation, supra* at 1106. See also *Pacific Seafarers, Inc.* v. *Pacific for East Line, Inc.*, 404 F.2d 804 (D.C. Cir. 1968).

In sum, a hearing request should present sufficient credible evidence to raise a material issue of fact which has not already been the subject of an administrative hearing. As is detailed in section III below, the hearing requests of Mr. Turner and Dr. Monte either do not present sufficient credible evidence to warrant a hearing or, where credible evidence is presented, even if true, that evidence does not raise a material issue of fact. Moreover, the hearing request of Mr. Turner, who was a participant in the hearing on the dry uses of aspartame, raises substantially the same objections that he had presented in the administrative hearing on the dry uses of aspartame. Those issues were considered by the Board's decision at p. 2 and reviewed in the Commissioner's decision (46 FR 38285), and Mr. Turner did not seek judicial review or administrative reconsideration of the agency's final approval for the dry uses of aspartame. Mr. Turner has thus had a fair opportunity to present his position on these issues and an additional hearing on the same issues is unwarranted.

III. Analysis of the Objections

A. Introduction

This section examines the specific issues identified in the objections to the regulations approving the use of aspartame in carbonated beverages. This document deals with each issue, but certain of the issues are considered at greater length because they have not been covered as extensively in public documents. Similar issues have been combined for ease of discussion and analysis. The general categories are: brain damage, decomposition products, consumption levels, cancer, interpretation of data from clinical studies, quality of data, and labeling. In responding to the various issues raised by the objections, the agency incorporates by reference all materials in the administrative record (Docket Nos. 75F–0355 and 82F–0305).

B. Brain Damage

1. *Brain lesions and mental retardation.* Mr. Turner's objection has expressed concern about aspartame's potential for causing mental retardation, brain lesions, and other adverse behavorial and physiological effects, because of adverse responses to its component amino acids, phenylalanine and aspartate. The issue was raised by Mr. Turner (p. 2) at the hearing on the dry uses of aspartame and was fully

considered by the Board and the Commissioner. Thus, further hearing on this issue is unwarranted. The following discussion summarizes the agency's consideration of this brain damage issue and explains the basis for the agency's conclusion that aspartame has been shown to be safe.

Because the phenylalanine and aspartate constituents of aspartame are also constituents of normal dietary protein, any risk from aspartame ingestion would occur because of the exposure to these amino acids in excess of normal exposure from dietary sources.

Very high doses of aspartate given by gavage or injection have been associated with discrete lesions in the brains of rodents. However, when the same high levels of aspartate or aspartame are administered in the diet to rodents, plasma levels of aspartate do not reach the concentrations required to produce lesions in rodent brains (46 FR 38285 at 38287). Continuous, extremely high plasma levels of phenylalanine, the other constituent amino acid of aspartame, have been known to produce mental retardation in the fetus of phenylketonuric mothers and in infants with phenylketonuria (PKU). However, an adequate margin of safety exists between the levels of phenylalanine known to produce mental retardation and those resulting even from exaggerated exposure to aspartame in carbonated beverages.

The possibility of brain lesions and mental retardation resulting from the use of aspartame was one of the major issues raised by Mr. Turner in his objection to the regulation approving the dry uses of aspartame and was fully considered at the hearing. The Board concluded that the ingestion of aspartame at levels that would be higher than those expected from consumption of aspartame for dry uses and in carbonated beverages could not be expected to increase the incidence of mental retardation, brain damage, or dysfunction of neuroendocrine regulatory system (Board's decision at p. 39). Subsequently, the Commissioner again reviewed the available evidence regarding brain lesions in rodents associated with asparatate and mental retardation related to phenylalanine. The Commissioner concluded that an adequate margin of safety exists between the amino acid levels resulting even from exaggerated exposure to aspartame and those observed to produce brain lesions in the rodent and mental retardation in PKU-related conditions (46 FR 38285 at 38288).

This issue has already been thoroughly considered in the earlier proceeding leading to the approval of aspartame for dry uses and Mr. Turner was given a full and fair opportunity to present his views in the earlier proceeding. Moreover, Mr. Turner could have sought judicial review or administrative reconsideration of the Commissioner's decision on this point, but did not challenge it. Accordingly, he is now estopped from raising the issue without new evidence unavailable at the time of the earlier proceeding. His objection presents no new information on this issue. A hearing is not justified if no data and information are submitted to support the factual determination urged (21 CFR 12.24(b)(3)).

2. *Potential adverse behavioral effects.* The amino acids, phenylalanine, tyrosine (a metabolite of phenylalanine), and tryptophan serve as precursors in the biosynthesis of neurotransmitters in both the periphery and the brain. According to the objections (Turner, p. 4; Monte, p. 5), the data submitted by Dr. Wurtman require the agency to hold a hearing to determine whether aspartame ingestion may alter the brain levels of these precursor amino acids and, in turn, neurotransmitter function, thereby leading to potentially adverse behavioral effects.

Although theories have been postulated to correlate changes in neurotransmitter function with cognitive or affective behavior, the state-of-the-art is such that little definitive evidence is available to support such relationships.

The data submitted by Dr. Wurtman (Ref. 1) in his comments on the carbonated beverage petition demonstrate increases in the plasma amino acid concentrations of phenylalanine and tyrosine in the human and rat following administration of large doses of aspartame to fasted subjects. The same data also demonstrate increases in the concentration of phenylalanine and tyrosine in the brain of the rat. Dr. Wurtman asserts that these increases in brain tyrosine and phenylalanine might result in changes in catecholamine neurotransmitters synthesized from these precursor amino acids. Drs. Wurtman (Ref. 2) and LaChance (Ref. 3) submitted comments that also postulated that these potential changes in neurotransmitters might lead to unpredictable behavioral effects, but submitted no evidence that would demonstrate that such behavioral effects have been observed or that they might plausibly be anticipated other than on the basis of the theories presented.

In the final regulation approving the use of aspartame for use in carbonated beverages, FDA discussed the data submitted by Drs. Wurtman and LaChance and the related literature on neurochemistry and behavior, and concluded that exposure to aspartame in foods would not result in adverse behavioral effects (48 FR 31376 at 31379-31380). After FDA had approved the use of aspartame in carbonated beverages, Dr. Wurtman submitted additional data in which he measured the levels of rat brain serotonin (5-HT) and its metabolite, 5-hydroxy-indoleacetic acid (5-HIAA) (Ref. 1). An increase in 5-HT and 5-HIAA occurring after high levels of glucose intake in fasted rats was blocked by concurrent administration of a high dose of aspartame. Dr. Wurtman suggested that this inhibition or "blockage" of glucose-mediated increases in brain levels of 5-HT and 5-HIAA by very high doses of aspartame, which he observed in animal studies, might mean that consumption of aspartame by humans could interfere with their normal pattern of carbohydrate consumption. Dr. Wurtman did not provide any evidence that the observed changes in brain 5-HT and 5-HIAA levels produced a change in the eating habits, preferences, or any other behavior of the animals tested.

FDA has reviewed the data dealing with the effect of aspartame in glucose-mediated changes in brain neurotransmitters that were submitted and has concluded that they are consistent with expected results following simultaneous administration of any food containing protein with glucose. The findings represent normal physiological variations in brain neurochemicals, which are a response to a specific dietary regimen, and thus would not be expected to be associated with adverse behavioral effects.

Drs. Wurtman and Lachance have developed interesting, but untested, hypotheses. The hypotheses do not, even if true, suggest that aspartame is not safe; they suggest merely that certain chemical changes may occur as the result of ingesting aspartame. For this reason, no purpose would be served by holding a hearing, because no issue of material fact is raised by the hypotheses. Moreover, even if the hypotheses raised an issue of material fact, a hypothesis, standing alone, does not justify a hearing in the absence of data on which to base a resolution of the issue raised. No such data are identified in Dr. Wurtman's submission or in the objections. FDA, therefore, denies the request for a hearing on these issues.

C. Decomposition and Reaction Products

There is a customary battery of toxicological tests in various animal

species that is required to demonstrate the safety of a direct food additive. These tests generally are familiar to sponsors of food additive petitions. To disseminate information about these tests further, the agency has developed and published a set of publicly available guidelines describing these tests "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food" ("REDBOOK" (Ref. 4)). The "REDBOOK" also sets forth certain tests beyond the customary battery of tests that the agency requires if the chemical structure of the additive or some other factor suggests particular reasons for concern.

In support of its petition for the use of aspartame for dry uses, Searle performed a complete series of traditional toxicological studies involving laboratory animals to verify the safety of aspartame during chronic exposure (Ref. 5). The design of the studies meets or exceeds that stated in the "REDBOOK" guidelines. In addition, because a consumer could be exposed to significant quantities of aspartame on a daily basis, and occasionally to high levels of aspartame, the petitioner conducted clinical studies (studies in humans) that provided ample evidence of the safety of aspartame under predicted levels of chronic ingestion or unusual situations of high, acute exposure (Refs. 6 and 7).

Before FDA approved aspartame, Searle submitted, and FDA evaluated, more than the usual tests with respect to the decomposition of this food additive. Because it is not feasible to require manufacturers to test every decomposition product, the agency routinely does not require testing of all of them unless a particular decomposition product poses a safety question, or little is known about its toxicological profile.

With respect to the toxicity of diketopiperazine (DKP), a primary decomposition product of aspartame, Searle submitted data in support of its petition for aspartame's dry uses to establish DKP's safety (Ref. 8). The agency also anticipated that a safety problem might arise in the use of aspartame in carbonated beverages if DKP, in solution, formed nitrosamines. Accordingly, Searle submitted, and FDA evaluated, studies on the likelihood of nitrosamine formation from the use of aspartame in carbonated beverages (Ref. 9).

FDA was aware of significant scientific literature on the toxicity of the following components of aspartame: phenylalanine, aspartic acid, and methanol. The agency reviewed the safety data submitted by Searle in support of its petition for dry uses derived from animal and clinical studies and consumption studies, as well as the existing body of scientific data, and concluded that the studies demonstrated the safety of these components. The Board's decision at p. 20 and p. 38 and the Commissioner both concluded that these components are safe (46 FR 38285 at 38287).

The objections now contend that FDA has failed to dispose of the possibility that decomposition and reaction products created by the addition of aspartame to carbonated beverages and carbonated beverages syrup bases may make those products unsafe (Turner, II, p. 9).

1. *Unidentified and unsafe decomposition and reaction products.* The objections present no evidence to support their contention that unidentified decomposition products or reaction products of aspartame may be harmful (Turner, p. 9; Monte, p. 8). One objection refers to an abstract of a scientific talk which discusses the reactivity of aspartame with certain flavor components of food (aldehydes and ketones) (Monte, p. 9). Reactions between food components occur too commonly to warrant specific testing for each individual class of reaction or decomposition products. Food itself undergoes a number of reactions, for example, in cooking. As the agency pointed out in the final regulation approving the use of aspartame in carbonated beverages, the similarity of the basic dipeptide structure of aspartame to normal dietary protein provides an added measure of assurance of its safety in regard to reactivity with food components and its metabolic fate (48 FR 31376 at 31382). Because the objection has presented no data to support its concern, and because the agency has no independent basis for concern, there is no basis upon which to grant a hearing. The agency will not grant a hearing on the basis of mere unsubstantiated allegations. Further, in the absence of any data, the simple charge that there may be a safety issue regarding decomposition products calls into question the agency's policy regarding the threshold for requiring scientific testing of such products. This question is one of both policy and law, i.e., the proper legal interpretation of the safety standards of the act, and thus is not a proper issue for an evidentiary hearing.

2. *Inability to account for up to 30 percent of the sweetener.* The objection states that Searle is unable to account for as much as 30 percent of the sweetener, despite having analyzed for components expected in the usual breakdown pathways, and that a more complete breakdown occurs at temperatures above 30° C (86° F) (Turner, p. 10). As detailed in the preamble to the carbonated beverage rule, the petition for this use of aspartame included the results of extensive stability studies on carbonated beverages (48 FR 31376 at 31377). These experiments were performed with beverages stored at various temperatures for periods of up to 52 weeks. Four beverage flavors were analyzed for aspartame and five decomposition products at various intervals. Essentially all of the analyses of beverages stored at 30° C for up to 40 weeks accounted for 90 to 100 percent of the original added aspartame. The contention that 30 percent of the decomposition products are unknown is misleading, because it focuses on the results at high temperatures (40° C (104° F); 55° C (131° F)) in which the results of the analysis are not as complete as those at lower temperatures. The more complete breakdown at higher temperatures is not unexpected, and, more important, is not crucial to the determination of the safety of the breakdown products. The sum of the decomposition studies submitted with the aspartame food additive petition for use in carbonated beverages provided the necessary identification of the decomposition products and evidence of their safety. The objections present no evidence in support of the implied increase in risk from greater decomposition at the higher temperature, other than the contention that the decomposition products are "unidentified" and that higher levels of free methanol would be present. After evaluating the studies and the general body of literature on the subject, FDA concluded that there was no reason to believe that the additional decomposition products would be substantially different from those formed at lower temperatures (48 FR 31376 at 31377). The objection does not justify a hearing because it presents no evidence that calls into question the safety of these decomposition products. As discussed above in section III.C.1., the allegation that all decomposition products should be presumed to be unsafe and therefore tested raises a legal and policy issue and is not appropriate for resolution at a hearing. (The toxicity of the decomposition product methanol is discussed below.)

3. *Methanol ingestion from decomposed aspartame.* Both objections argued that aspartame's decomposition can result in exposure to adverse levels

of methanol, "a known poison," (Monte, p. 2) and that the metabolism of methanol in the body yields formaldehyde, "a known carcinogen" (Turner, p. 12) (see section III.E. below). The agency evaluated the safety issues related to the ingestion of methanol derived from aspartame in its evaluation of aspartame for dry uses and concluded that the levels of methanol resulting from the use of aspartame in carbonated beverages did not pose any safety issues because they were well below levels of exposure expected to produce toxicity (Ref. 10).

Dr. Monte's objection argued (1) that "free" methanol produced by the decomposition of aspartame in carbonated beverages is more toxic than "dietary" methanol formed by the metabolism of aspartame in the gastrointestinal tract because of the differences in metabolism and a more complete amount of absorption of "free" rather than "dietary" methanol; and (2) that the amount of "free" methanol absorbed as a result of aspartame consumption is of sufficient quantity to produce a "significant and rapid rise in methyl alcohol and formate levels in the plasma" (Monte, p. 4). The objections allege that these levels are of toxicological concern under acute or chronic use conditions, but they neither submitted nor referred to available data in support of that allegation.

a. *Free Methanol Is Not More Toxic Than Methanol Produced by the Metabolism of Aspartame in the Gastrointestinal Tract.* The objection proffered a hypothesis that the decomposition of aspartame to methanol or to any of its secondary metabolities prior to consumption poses additional safety questions regarding the continued use of aspartame in carbonated beverages, but provided no evidence to support that position (Monte, p. 3). FDA analyzed the methanol safety issue before the agency approved aspartame for dry uses and again in its evaluation of the petition for use in carbonated beverages (Ref. 10). The objection has presented no evidence of any kind to alter FDA's original evaluation. FDA cannot accept as a basis for conducting a hearing unsubstantiated hypotheses concerning issues the agency already satisfactorily resolved.

Metabolic studies performed in monkeys and submitted by Searle in support of its petition for aspartame for dry uses demonstrate that the overall metabolic disposition of the methanol moiety from aspartame is similar to that of methanol administered alone to monkeys (Ref 11). The methyl moiety appears to be rapidly and completely cleaved from aspartame in the gastrointestinal tract, and this methyl group is oxidized in essentially the same manner as "free" methanol. The only detectable difference in the pharmacokinetic properties between "free" methanol and "dietary" methanol derived from the hydrolysis of aspartame is a faster rate of absorption of the "free" methanol within the first hour. "Free" methanol is readily absorbed from the stomach whereas aspartame must pass into the small intestine before hydrolysis and absorption of the methanol can occur. This small difference in the rate of methanol absorption is not significant because the metabolism of methanol is slow and because the overall amount of methanol ultimately absorbed as a result of consumption of a given quantity of aspartame-sweetened beverage is the same.

Thus, there is no scientific basis for differentiating the "free" from the "dietary" methanol in analyzing the toxicological profile of aspartame. The agency evaluated the metabolism data early in its evaluation of the data in support of the dry use petition, and assumed that methanol was completely hydrolyzed from aspartame in the gastrointestinal tract (Ref. 11). Exposure to methanol from aspartame can be calculated on a one-to-one molar basis independent of the decomposition rate in carbonated beverages, which can vary with storage conditions. Therefore, an estimate of methanol exposure following ingestion of aspartame is provided by taking 10 percent of the weight of the aspartame dose. The objection submits no data that supports its position or discredit the agency's conclusions based on the earlier studies performed by Searle. Thus, there is no basis for granting the hearing request.

b. *The Amount of Free Methanol Absorbed from Aspartame Does Not Produce a Significant and Rapid Rise in Plasma Methyl Alcohol and Formate Levels.* One objection (Turner, p. 11) contended that FDA had incorrectly concluded that the level of dietary exposure to methanol is not of "prime importance" in assessing the safety of aspartame (48 FR 31376 at 31380). The objection did not, however, present evidence showing at what concentration methanol is toxic or that the consumption of aspartame would result in the consumption of toxic levels of methanol.

The agency does not believe that methanol exposure equivalent to 10 percent of the aspartame dose is of sufficient quantity to be of toxicological concern under acute or chronic use conditions. A study (Ref. 12) submitted by Searle in support of its petition for the dry uses of aspartame showed no detectable levels of methanol in the blood of human subjects following the ingestion of aspartame at 34 milligrams per kilogram (mg/kg) body weight (the 99th percentile level of projected ingestion across all age groups). Assuming complete hydrolysis after ingestion, this 34 mg/kg dose of aspartame is equivalent to a dose of 3.4 mg/kg body weight of methanol. The agency reviewed this study and others dealing with methanol toxicity prior to approving aspartame for dry uses and cited the data in the preamble to the final regulation approving the use of aspartame in carbonated beverages (48 FR 31376 at 31380).

Even following administration of an abuse dose of aspartame of 200 mg/kg body weight (equivalent to 20 mg/kg body weight of methanol or drinking more than 13 quarts of aspartame-sweetened orange soda) in a clinical study conducted by Searle, the mean peak blood methanol concentration reached only 26 mg per liter. The hearing request contains no evidence to suggest that even this level of methanol, consumed in free form, is toxic. Thus even if all aspartame in soft drinks decomposed prior to their consumption, the agency has no reason to believe any danger of methanol poisoning would exist. FDA remains convinced that the studies submitted by Searle in support of the dry use, and reviewed by FDA prior to the dry uses approval and again in its evaluation of the carbonated beverage petition, adequately support the agency's conclusion that there was "no cause for concern from the levels of dietary methanol resulting from the highest projected levels of aspartame consumption" (48 FR 31376 at 31381).

The agency has recently become aware, however, of clinical data that further buttress the agency's determination. Although FDA did not rely on these studies in approving the carbonated beverage petition, nor is it necessary to rely on the studies here, the agency believes that they present pertinent information that is consistent with that contained in the Searle data. This document discusses them to some extent. FDA has placed copies of the reports in the administrative record for Docket No. 82F-0305. Among these studies are some that indicate that the toxic effects of methanol are due to formate accumulation and not to formaldehyde or methanol itself (Refs. 13, 14, and 15). Formate is the oxidation product of formaldehyde which is itself formed from the metabolism of

methanol. In the Searle clinical study using abuse doses of aspartame equivalent to 20 mg/kg body weight of methanol, no significant increases were observed in plasma concentrations of formate, suggesting that the rate of formate production does not exceed its rate of urinary excretion. In fact, studies in human subjects given oral dosages of methanol of 71 to 84 mg/kg body weight showed no toxic effects with blood levels of methanol reaching 47 to 76 mg per liter 2 to 3 hours afterwards (Ref. 16). From estimates based on blood levels in methanol poisonings, it appears that the ingestion of methanol on the order of 200 to 500 mg/kg body weight is required to produce a significant accumulation of formate in the blood which may produce visual and central nervous system toxicity (Refs. 17 and 18).

The toxic doses of methanol (200 to 500 mg/kg body weight) are approximately one hundred times that ingested when aspartame is consumed at the 99th percentile level of projected chronic ingestion (10 percent of 34 mg/kg body weight aspartame, or 3.4 mg/kg body weight methanol). Moreover, orange soda, which may contain the highest concentration of aspartame in carbonated beverages (335 mg aspartame per 12 fluid ounces or 930 mg per liter), results in a lower methanol level (93 mg per liter) than that found in the average fruit juice (140 mg per liter) (Ref. 19). Under the most conservative assumption, the complete hydrolysis of aspartame to methanol, an adequate margin of safety exists for the use of aspartame in carbonated beverages. The consumption of aspartame would not result in toxicologically significant methanol and formate levels.

Finally, it is well known that much food contains significant quantities of methanol. In fruit juices, the average content of methanol is 140 mg per liter and grain alcohols (such as gin and whiskey) contain as much as 1,000 mg per liter (Ref. 19). Moreover, fresh fruits and vegetables also contain compounds that are metabolized in the body to methanol (Refs. 20 and 21). Normal metabolic processes such as purine and pyrimidine biosynthesis and amino acid metabolism require methyl groups from compounds like methanol (Ref. 22). It also appears that either methanol or formaldehyde may serve as precursors for the methyl groups in choline synthesis (Ref. 23).

The agency has concluded that, because the objection has failed to present evidence establishing at what level methanol is toxic and whether consumption of carbonated beverages containing aspartame would exceed that level, no hearing is required to reevaluate the significance of exposure to methanol from aspartame consumption. The objection submitted no data and the agency is aware of none in support of the objection's position. FDA will not grant a hearing on the basis of a mere allegation.

4. *Nitrosamines formation from DKP and toxicity of DKP.* The objections allege that the agency has "mischaracterized" and "failed to consider" data dealing with potential toxicity from DKP (Turner, p. 10) and has failed to assess the "potential danger" of nitrosamine formation by intestinal bacteria after prolonged exposure to DKP (Monte, p. 7).

a. *Nitrosation of DKP.* FDA reviewed studies conducted by Searle aimed at evaluating the nitrosation potential of aspartame and DKP before the original approval of aspartame in 1974. These studies attempted to form, under ideal conditions, the nitrosamines of aspartame and DKP and demonstrated that stable nitrosamine derivatives were difficult to form at a level detectable with the then current analytical methodology (Ref. 24). The study also demonstrated that nitrosamine derivatives of aspartame or DKP intermediates, formed under ideal laboratory conditions, were extremely unstable under physiological or aqueous conditions. Given these results, FDA concluded that it was most unlikely that any nitrosamines could remain in the gastrointestinal tract or in an aqueous solution, such as soft drinks, containing aspartame or DKP (Ref. 25).

The objections further contend that the agency has been remiss in not reexamining the nitrosamine issue, employing more sensitive, modern analytical methodology. In support of this contention, one objection (Monte, p. 7) cites a recent publication describing the low level detection at parts per billion levels of structurally unrelated nitrosamines in malt beverages. The objection offered no evidence that the formation of nitrosamines in malt beverages has any possible relevance to structurally dissimilar nitrosamine formation in soft drinks containing aspartame. Nor did the objection present any evidence to rebut the data submitted by the petitioner that these compounds cannot be readily formed in aspartame. The agency therefore concludes that no hearing is required because the objection did not provide any evidence to refute the previous safety determination on nitrosamine formation. Thus, the objection states an allegation, but raises no issue of fact on which to base a hearing.

b. *Toxicity of DKP.* An additional issue raised by the objection was that FDA had "mischaracterized" the results from Lederer's study on DKP and that the agency had "failed to consider adequately the concern" for fetal toxicity (Turner, p. 10). The teratology and reproduction studies conducted by the petitioner in support of its petition for dry uses of aspartame rebut that position (Ref. 25). Moreover, the agency notes that Dr. Lederer acknowledged, prior to the publication of the carbonated beverage rule, that "the conclusions of my work are concordant with those of the U.S.A." (Ref. 26; see also the discussion at 48 FR 31376 at 31380). Consequently, the agency also finds that the objections raise no material issue of fact with regard to potential embryotoxicity, but make an unsupported allegation. FDA will not hold a hearing based on a mere allegation.

D. Consumption Levels

Mr. Turner's objection alleges that in concluding that aspartame was safe for carbonated beverage use, the agency improperly estimated consumption levels of aspartame because (1) FDA failed to include additional individuals likely to consume carbonated beverages; (2) FDA based consumption levels on understated or nonexistent calculations; (3) the use patterns on consumption in the petition were not correct; (4) FDA did not consider the consumption of products containing aspartame at the three main meals; (5) FDA did not include consumption of aspartame in hot weather in the estimate; (6) FDA used the "gross national population consumption formula" to calculate consumption; (7) intake greater than the previous acceptable daily intake is unsafe (Turner, pp. 19–23).

Various consumption estimates, including estimates of aspartame exposure resulting from the consumption of carbonated beverages containing aspartame, were exhaustively considered by the Board's decision at p. 14 to p. 22 and by the Commissioner in his final decision approving aspartame for dry uses (46 FR 38285 at 38289–38290). Mr. Turner argued in the earlier proceeding that the consumption levels were underestimated and the Board and the Commissioner considered but rejected these arguments. Thus, Mr. Turner has been given a full opportunity to present his views on consumption.

FDA believes further that the objection demonstrates a basic misunderstanding of how the agency

calculates the estimated daily intake (EDI) of food additives, and how these dietary exposure estimates relate to the acceptable daily intake (ADI) of the additive. The agency is therefore discussing the important principles used to develop consumption estimates.

The EDI is a measure of chronic dietary exposure of the additive from all food sources in which it is used; it is the day-in and day-out estimated intake over a particular span of an individual's lifetime. The ADI is the amount of a compound that can be safely consumed each day on a chronic basis; it is derived primarily from chronic toxicological studies in animals. Levels of consumption may occasionally rise above or fall below the EDI. Daily carbonated beverage consumption, for example, may be greater in hot weather. The important safety issue is whether the EDI exceeds the ADI. Both of these figures may change as chronic consumption patterns change. The EDI will increase as the use of the additive is extended to other food categories, and the ADI may be revised as more toxicological information is evaluated. For example, prior to the approval of the use of aspartame in carbonated beverages, the agency increased the ADI from 20 to 50 mg/kg body weight, because additional toxicological data from clinical studies submitted by the petitioner demonstrated that the new level was safe (Ref. 10).

The allegations that FDA failed to include additional individuals likely to consume carbonated beverages, that carbonated beverage consumption was understated or that consumption calculations do not exist are simply untrue. Searle and FDA calculated the maximum EDI of aspartame during the proceedings leading to the approval of aspartame for dry use and again during the evaluation of the carbonated beverage petition using three different methods. FDA reviewed each of these estimates (46 FR 38285 at 38289; 48 FR 31376 at 31377). Each of the EDI exposure estimates, including the 34 mg/kg body weight estimate ultimately accepted by the Commissioner (46 FR 38285 at 38290), explicitly included aspartame intake from carbonated beverages or was even broader in scope. (See 46 FR 38289–38290 for a complete discussion of consumption levels.) One estimate assumed that aspartame replaced all sucrose in the diet of an average male, and another assumed that aspartame replaced all carbohydrate in that diet.

The objection alleges that the patterns of consumption in the petition were not correct but submitted no data to show that actual use patterns differ from those calculated by Searle and FDA. FDA calculates dietary exposure estimates of new direct food additives by applying data on food consumption, as established by surveys, and data on the concentration of the additive in foods. The data submitted by Searle dealt with all aspects of aspartame consumption including consumption with other foods, such as the three main meals. In its petition for carbonated beverage approval, Searle included a new calculation that relied on the most recent survey data compiled by the Market Research Corp. of America (MRCA). MRCA survey data are compiled from dietary records kept throughout the year by 4,000 U.S. households. Estimates using MRCA data are based on the foods actually eaten by people in various age brackets and include data from both average and heavy users in particular food categories. Prior to approving aspartame for use in carbonated beverages, the agency reviewed the Searle calculation and computed its own values for aspartame exposure from all foods (Ref. 27). The agency's evaluation specifically recorded the percentage increases in estimated aspartame exposure resulting from carbonated drink consumption, and concurred with the petitioner's method of calculation, but restated the exposure estimate to reflect "eaters only." This estimate of EDI is based on those people who actually consume the product and maximizes EDI figures for any particular age group, because it does not average in the nonconsumer in the survey population.

On an occasional day, for example in hot weather, intake levels of aspartame may exceed the ADI. However, this occasional excess would not result in chronic intake above the ADI. Whether it is safe to ingest levels of a substance on some days in excess of the established ADI depends on how acutely toxic the additive is. Clinical tests of aspartame at doses of 200 mg/kg body weight, which exceeds the ADI, were performed and submitted by Searle in support of its petition (Ref. 6). In these studies, the acute effect of the ingestion of single doses of 200 mg/kg of aspartame on blood levels of amino acids and methanol were found to be well below toxicological levels of concern (48 FR 31376 at 31381). Thus, Mr. Turner's observation that the consumption of six cans of beverage containing aspartame on a hot day will result in exposure that exceeds the ADI is not a credible basis for alleging that the agency has "understated" consumption levels (Turner, p. 21). The consumption by a 20 kg child of six 12-ounce cans of orange beverage sweetened with aspartame would result in an exposure of 100 mg/kg of aspartame, which is well below the 200 mg/kg dose administered in Searle's clinical study without any sign of acute toxicity (Ref. 6) and even further below the levels of toxicological concern. (Six 12-ounce cans of orange beverage sweetened with aspartame (.93 mg per milliliter) would contain approximately 2,008 mg of aspartame.) Accordingly, the objection fails to present credible evidence raising a material issue of fact. The objection is also based on a demonstrably false premise.

As discussed above, the agency has estimated that the highest likely chronic consumption of aspartame per day would be 34 mg/kg body weight. The objection contended that aspartame consumption will not always occur in a "throughout the day" pattern, but would occur principally in large doses, that is, at meals when individuals are most likely to consume food and aspartame-containing beverages at the same time (Turner, p. 20). The agency does not regard the possible consumption of aspartame in a single large dose as posing any safety problem whatsoever. During the evaluation of the petition for the dry uses of aspartame, the agency analyzed the toxicity from acute exposure to aspartame. FDA relied upon a study in which high single doses of up to 200 mg of aspartame per kg of body weight were given to human subjects (Ref. 6). With respect to acute toxicity, the pattern of aspartame ingestion over the day is not important as long as the total amount ingested per day does not exceed the 200 mg/kg level shown to be safe.

Finally, FDA is not familiar with the term "gross national population consumption formula" mentioned in the objection and is unable to determine its relevance to the issue of aspartame consumption (Turner, p. 22). Presumably, the objection is suggesting that FDA should adopt an entirely new policy regarding estimates for food additive consumption instead of its current policy, which is described above and is used in estimating the projected consumption of food additives. The current policy and possible alternatives to it are not at issue in this proceeding, nor are they proper issues for a formal evidentiary public hearing. Moreover, the objection presents no evidence describing this proposed new consumption formula, or establishing its validity.

FDA is denying the request for a hearing on the consumption issue for a

number of reasons. First, Mr. Turner was a party to the earlier proceeding in which consumption estimates were an important issue. He raised essentially the same consumption issue there. The Board's decision at p. 14 to p. 22 and the Commissioner's decision (46 FR 38285 at 38307) each discussed the matter and ruled against Mr. Turner's objection. Mr. Turner could have sought judicial or administrative review of the earlier decision. He did not do so. He cannot now complain, because he has had a full and fair opportunity to present his views and be heard. Moreover, his objections present no data in support of his position.

E. Carcinogenicity Potential of Aspartame and its Metabolites

1. *Aspartame's potential for causing brain tumors.* Mr. Turner objects to the approval of aspartame for use in carbonated beverages because "the Commissioner and the agency have not adequately dealt with the recommendation of the Public Board of Inquiry that approval of aspartame be withheld pending results from further oncogenic studies with the additive" (Turner, p. 15). Interpretation of the results of the chronic rat feeding studies designed to determine aspartame's potential for causing brain tumors was one of the major scientific issues before the Board, and consequently one of the most comprehensively deliberated issues bearing on aspartame's safety. The Board found that the results of these tests were not sufficiently conclusive and recommended that approval of aspartame be withheld pending results from further oncogenic studies with the additive (Board's decision at p. 49). The Commissioner disagreed with the Board's findings and concluded that there was a reasonable certainty that aspartame does not cause brain tumors in rats (46 FR 38285 at 38295). Mr. Turner was a party to that earlier proceeding and made the same objection to the regulation approving dry uses of aspartame. He recieved a formal hearing on that objection. Mr. Turner now contends that the Board's findings, rather than the Commissioner's findings, were correct. Mr. Turner's current objection did not, however, submit any new data on this issue.

In his final decision (46 FR 38285 at 38295), the Commissioner explained why he disagreed with the Board's findings that more studies were needed on the carcinogenic potential of aspartame. This decision is supported by the record which included not only the three chronic studies before the Board but also negative results observed in a subsequent animal study not available to the Board (Ref. 28).

The administrative record shows that the approval of aspartame in supported by a complete series of toxicological tests in animals. These studies have been thoroughly reviewed by FDA scientists. Based on that review and for the reasons stated in the Commissioner's decision, the agency reaffirms the conclusion that there is a reasonable certainty that aspartame does not cause brain tumors in rats.

Mr. Turner had a fair opportunity to present his arguments and have them fully considered in the proceeding leading to the approval of aspartame for dry uses. He had an opportunity to challenge the Commissioner's decision in the Court of Appeals. He chose not to do so, and is thus estopped from relitigating the issue in the absence of new evidence. He has presented no new evidence in support of his position here, and thus has raised no material issue of fact that justifies a further hearing in this proceeding.

2. *Uterine polyps in rats.* Mr. Turner's objection states that "* * * neither the Commissioner nor the agency has recognized 'precancerous polyps' in the approval of aspartame for use in carbonated beverages" (Turner, p. 34). The polyps in question originated in the uteri of rats chronically administered the diketopiperazine-derivative of aspartame (DKP) for 2 years (Ref. 29). The study data in question were submitted to the agency in support of Searle's original food additive petition for aspartame. Subsequently, as a result of FDA's concern over the issue, the agency referred the raw data to four independent teams of pathologists at FDA, the Massachusetts Institute of Technology, the Armed Forces Institute of Pathology, and G.D. Searle for review. Prior to convening the Board, those teams identified cystic endometrial hyperplasia, which is commonly referred to as uterine polyps, as the most common lesion. Cystic endometrial hyperplasia occurs in aging rats spontaneously and is most commonly associated with age-related endocrine disturbances. Uterine polyps are considered to be a localized form of endometrial hyperplasia and have no tendency to undergo malignant transformation and, therefore, are not considered precancerous in nature (Ref. 30).

The Searle study also supports a safety factor of about 1,000 with respect to the induction of uterine polyps. Thus, the agency concludes that the possibility that uterine polyps will occur as the result of aspartame ingestion is very remote (Ref. 29).

Because the polyps were not considered precarcinogenic, they were not an issue specifically addressed by the Board and the Commissioner. Nonetheless, Mr. Turner could have raised the issue at the hearing or before the Commissioner. He could have sought judicial review of the Commissioner's decision, but did not. He has had an adequate opportunity to be heard.

3. *Carcinogenic potential of formaldehyde.* The objections stated that there are no studies available for FDA to use in assessing the chronic toxicity and carcinogenic potential of methanol and formaldehyde formed from methanol metabolism in the body (Monte, p. 4; Turner, p. 12).

The agency does not agree with this assertion. In its original submission to FDA in support of the use of aspartame for dry uses, Searle included the results of chronic feeding studies of aspartame in the dog, the mouse, and the rat (Ref. 31). The results of another chronic study that corroborate the Searle study are available through the open literature (Ref. 28). One of the major objectives of this type of chronic study is a comprehensive histopathological examination of virtually all organ systems in order to assess both the chronic toxic and carcinogenic potential of the administered compounds.

Before approving the original petition for aspartame for dry uses, FDA analyzed the chronic feeding studies and concluded that aspartame was safe. Although these studies were designed to assess the toxicity and potential carcinogenicity of aspartame, they also tested the toxicity and potential carcinogenicity of aspartame's metabolites. The metabolic studies submitted by the petitioner demonstrate that all ingested aspartame is broken down in the gastrointestinal tract into its constituents, aspartic acid, phenylalanine, and methanol. Because the aspartame molecule is 10 percent methanol by weight and because the dosages used in the chronic studies were quite high (rat: 1 to 8 g/kg body weight, mouse: 1 to 4 g/kg body weight, and dog: 1 to 4 g/kg body weight), the exposure of these species to methanol in these four chronic studies was as high as 400 to 800 mg/kg body weight per day, a very significant dose. Based on an ADI for human exposure of 50 mg of aspartame per kg body weight per day (or 5 mg/kg body weight of methanol), these doses represent an 80- to 160-fold exaggeration of methanol exposure in the chronic animal studies when compared with the very high but

conceivable levels of human exposure to methanol through aspartame ingestion.

The Searle studies also ensured comparable dosages and durations of exposure to formaldehyde, because, as discussed above, methanol is metabolized to formaldehyde on a one-to-one molar basis. Thus, contrary to the objections, both methanol and formaldehyde were thoroughly tested, and FDA reviewed the results of those tests prior to approving aspartame for dry uses.

The hearing request cites a recent study indicating that formaldehyde, administered intranasally to rats, produced carcinomas at the site of application—the nasal turbinates (Ref. 32). The site of the carcinomas strongly indicates that the neoplastic process is a localized, not a systemic, reaction to the known irritating and cytotoxic properties of formaldehyde. No increase in tumor incidence was observed at sites remote to direct exposure (Ref. 32). The same study supports the further conclusion that direct exposure to relatively high concentrations of formaldehyde gas is necessary before the carcinogenic process occurs.

In addition, there is another series of chronic studies in the scientific literature, which FDA considered prior to the approval of aspartame for dry uses, in which hexamethylenetetramine was administered in the drinking water in doses of 0.5 to 5 percent to three strains of mice for 60 weeks and to Wistar rats in drinking water at 1 percent for 104 weeks (Ref. 33). Because hexamethylenetetramine is broken down in the acid medium (Ref. 34) of the stomach to formaldehyde, these studies directly tested whether orally administered formaldehyde is carcinogenic (Ref. 33). In the hexamethylenetetramine studies, no evidence of carcinogenic activity was found in any of the test groups.

The fact that aspartame when ingested in doses up to 8 gm/kg body weight (800 mg/kg formaldehyde) produced no carcinogenic effect is strong evidence that formaldehyde exposure from the oral route of administration is without carcinogenic risk. Any question regarding adequacy of dosing from these studies is resolved by the results from the studies with hexamethylenetetramine where doses of up to 1,500 mg/kg body weight formaldehyde were ingested by mice and rats without any carcinogenic effect. Thus, the inhalation study is not appropriate for use in determining whether formaldehyde is a systemic carcinogen and in evaluating the safety of aspartame. There is no issue of fact, because it has been demonstrated that formaldehyde is not a systemic carcinogen. No hearing is required, because the objection does not submit sufficient evidence to raise a serious question about aspartame's systemic carcinogenicity. Although the agency does not believe that a hearing is justified in view of the hexamethylenetetramine studies, the objectors may request reconsideration as provided in 21 CFR 10.33 and are free to submit comments on the hexamethylenetetramine studies, or on any other studies that are or may become available.

4. *Two human cancers in clinical studies.* One of the objections claims that the Commissioner failed to assign sufficient significance in his decision approving aspartame for dry uses to the finding of two human cancers at the eleventh week of a 13-week study on aspartame (Turner, p. 17). One insulin-dependent diabetic developed an adenocarcinoma of the breast and one non-insulin-dependent diabetic developed a reticulosarcoma of the stomach.

The agency as well as a reviewing pathologist concluded that these types of cancer are associated with a pathological process requiring many months to years for development into a malignant phase. Therefore, the cancers arising in these two patients receiving aspartame were considered to be coincidental and unrelated to aspartame intake.

As with so many of Mr. Turner's objections, that issue was before the Board and the Commissioner in the earlier proceeding. Mr. Turner could have appealed the Commissioner's decision. That he chose not to do so means that he may not raise the issue again at this time. He has had an adequate opportunity to be heard, and no new hearing is required.

F. Interpretation of Data From Clinical Studies

Mr. Turner's objection alleges that FDA failed to give adequate credence to the potential for adverse reactions related to the use of aspartame observed in the clinical studies (Ref. 35). The objection pointed out that there were five times as many complaints reported by aspartame users as by the control group in that study (Turner, p. 22).

FDA did evaluate these results. The clinical study referred to in the objection was only one of several clinical studies, which included normal adults and children, as well as obese and diabetic adults, conducted by the petitioner and submitted to the agency in support of its petition on dry uses of aspartame (Ref. 7). Based on an analysis of the results from all these studies, FDA concluded that there was no evidence of any consistent or obvious pattern of specific complaints from aspartame use.

All the data from these studies were available prior to the earlier hearings. Mr. Turner could have raised the issue at the hearing or before the Commissioner but did not do so. He has had an adequate opportunity to be heard, and no hearing is required on the issue. Moreover, in the absence of any additional data bearing on the clinical study, Mr. Turner's objection constitutes nothing more than an allegation, and raises no material issue of fact upon which a hearing could he held.

G. Quality of Data

One objection claims that the research submitted by G. D. Searle should not have been relied upon for evaluating the safety of aspartame because the research was conducted in a flawed and inaccurate manner (Turner, p. 23). This issue was presented to the Commissioner in the earlier proceeding on the dry uses of aspartame and although decided adversely to Mr. Turner, he failed to seek judicial or administrative review of the issue. Although Mr. Turner is estopped from relitigating this issue a second time, the agency has nevertheless considered it and concluded that the quality of the data is adequate.

The agency believes that there has been an adequate confirmation of the quality of the studies to provide reliable evidence for the safety assessment of aspartame. In fact, a comprehensive review of the authenticity of the aspartame research data was performed on the 15 pivotal studies submitted by G. D. Searle. Three of these studies were audited by FDA and 12 by UAREP. This was a massive undertaking and took over 2 years to complete. UAREP concluded that the studies were authentic and, on December 13, 1978, submitted to FDA its 1,062 page report. The agency agreed with UAREP that those 12 studies, as well as the 3 studies which it had reviewed, were indeed authentic. In addition to determining the authenticity of these studies, the report by UAREP also contained detailed observations of how these studies were conducted.

Although UAREP, like the agency, noted some procedures and irregularities that warranted improvement, none were of such a serious nature as to invalidate an entire study. In view of the fact that the objection has provided no new information on the quality or design of Searle's data, the agency believes that it

is adequately addressed in the Commissioner's final decision on aspartame (46 FR 38285 at 38301).

H. Labeling of Food Containing Aspartame

One objection contends that foods containing aspartame are not adequately labeled, but provides no information to support the position that current requirements are insufficient (Monte, p. 10). Current regulations require that the label of any food containing aspartame shall bear a prominent and conspicuous notice to phenylketonurics that the product contains phenylalanine.

No other susceptible consumer group has been identified by the objection, nor has it identified the "substantial dangers" (Monte, p. 10) posed by the regulated uses of aspartame. Accordingly, the agency concludes that the issue raised is one of policy, not fact, and is not resolvable by a hearing.

V. Summary and Conclusions

Under 21 CFR 170.3(i), the safety of a food additive means that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use. FDA's regulations reflect the Congressional judgment that the additive must be properly tested and the tests carefully evaluated, but the additive need not, indeed cannot, be shown to be safe to an absolute certainty. As the House of Representatives Report on the Food Additives Amendment stated:

Safety requires proof of a reasonable certainty that no harm will result from the proposed use of the additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance.

H.R. Report No. 2284, 85th Cong., 2d Sess., 1958.

Aspartame has been exhaustively tested for safety and the data have been reviewed by the agency over the course of 11 years. In addition, FDA referred portions of the safety on aspartame to outside groups of scientists for additional review, prior to approving aspartame for dry uses. The safety testing conducted for aspartame surpasses the testing requirements for direct food additives developed by the agency and set forth in its "REDBOOK" (Ref. 4). As discussed in Section I. above, the safety issues associated with the dry uses of aspartame were the subject of additional scrutiny at a hearing before the Public Board of Inquiry conducted by three scientists. Finally, the Commissioner reviewed the safety issues and the Board's conclusions on them so that he could reach a final decision on the safety of aspartame for dry uses.

After reviewing all the points raised in the objections, FDA concludes that the following issues were fully dealt with in the earlier proceeding leading to the approval of aspartame for dry uses: brain lesions and mental retardation, consumption levels, aspartame's potential for causing brain tumors, uterine polyps in rats, two human cancers and other alleged adverse reactions in clinical studies, and the quality of Searle's safety data submitted in support of the dry uses of aspartame. In the current proceeding, Mr. Turner submitted an objection covering each of these points even though, as had been pointed out before, he was a participant in the earlier proceeding. He had the opportunity to present evidence before the Board of Inquiry; he had the opportunity to question participants in that hearing; and he had the opportunity to and did file exceptions to the Board's findings. He also had the opportunity to appeal the Commissioner's decision on the dry use petition to the Court of Appeals as provided by section 409(g)(1) of the act (21 U.S.C. 348(g)(1)) or to petition for administrative reconsideration under 21 CFR 10.33. He has thus had a full and fair opportunity to present his case and have it considered in the proceeding on the dry uses of aspartame. No more is required.

The objections in the current proceeding have raised some points that present issues of law and policy, not issues of fact, specifically the allegations concerning safety testing requirements for decomposition products, consumption estimates, and labeling requirements. As explained in the specific sections discussing these points, FDA will not hold a hearing where the objection raises only issues of law or policy because these kinds of issues are not proper for resolution at a hearing.

One objection argued that because formaldehyde produced tumors at the site of administration (intranasally) in rats, FDA could not properly conclude that this metabolite of aspartame was not a systemic carcinogen. The objection offered no additional data, other than the reference to the intranasal study, that could be relied upon to solve the issue at a hearing. Considered in its factual setting, this study is inadequate to justify a conclusion that formaldehyde is a systemic carcinogen. FDA will not grant a hearing if the material submitted, even if accurate, is insufficient to justify the factual determinations urged.

Finally, the objections made a number of unsubstantiated allegations, specifically that aspartame might cause potential adverse behavioral effects, that various decomposition products of aspartame may be toxic, that the consumption estimates of aspartame are inaccurate, and that aspartame may cause cancer. In each of these cases, the objections have proferred no data on which a meaningful hearing might be based. Thus, no hearing is required on those issues.

For the reasons stated in this conclusion and in the discussion above, FDA is denying the objections and requests for a hearing.

Dated: February 17, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Appendix—References

The following information has been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be reviewed in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from R. J. Wurtman to Sanford A. Miller, July 21, 1983.

2. Wurtman, R. J. letter to the editor, *New England Journal of Medicine*, 309:429-430.

3. Letter from P. A. LaChance to Anthony Brunetti, December 2, 1982.

4. Food and Drug Administration, "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food," **Federal Register** of October 15, 1982 (47 FR 46141).

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8. Food Additive Master File 134, Studies E-37, E-38, E-42, E-48, E-56, and E-57.

9. Food Additive Master File 134, Studies E-50, E-68, and E-71.

10. FAP 2A3661, Memoranda from Food Additives Evaluation Branch, January 18 and March 15, 1983.

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federal register

Wednesday
February 22, 1984

Part VII

Department of Energy

Office of Secretary
Economic Regulatory Administration

Natural Gas Imports; Policy Guidelines and Delegation Orders; Procedural Orders

DEPARTMENT OF ENERGY

Office of the Secretary

New Policy Guidelines and Delegation Orders From Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas

AGENCY: Department of Energy.

ACTION: Issuance by the Secretary of Energy of new policy guidelines and delegation orders, superseding current delegation orders, to the Administrator of the Economic Regulatory Administration and to the Federal Energy Regulatory Commission relating to importation of natural gas.

SUMMARY: These new delegation orders and policy guidelines are the result of a review of the federal government's policies and procedures for regulating the importation of natural gas into the United States. The guidelines set forth a new policy direction for gas import arrangements and provide the basis for authorizing import arrangements through revised regulatory procedures. The policy emphasis is on import agreements structured to supply natural gas to American consumers at competitive prices and responsive to changes in the markets served. The revised regulatory procedures are designed to implement the policy guidelines.

Modifications are made to the regulatory responsibilities for gas imports shared by the Economic Regulatory Administration and the Federal Energy Regulatory Commission. These are set forth in new delegation orders from the Secretary of Energy to the ERA Administrator and the Commission.

Introduction

The United States presently imports approximately 5 percent of its natural gas. Although this percentage is small on a national basis, certain regions of the country are dependent on imported gas for over 50 percent of their needs. While the quantity of gas imported into the U.S. has dropped significantly during the recent period of surplus domestic gas deliverability, imported gas will likely be increasingly required over the longer term to supplement domestic gas production. Most industry projections suggest a growing demand for imported gas later in this decade.

Natural gas is currently imported from Canada, Mexico, and Algeria. In 1983, 78 percent of imported gas came from Canada, 14 percent from Algeria, and 8 percent from Mexico. Most import contracts are relatively long-term, with some involving significant capital investment for transportation systems and related facilities. These costs, along with higher prices charged by gas exporters, have generally resulted in imported gas being more expensive than domestic natural gas.

Pipelines were willing to pay the higher cost of imported gas, until recently, because the higher cost imports were combined with substantial volumes of less expensive, price-controlled domestic gas in pipeline systems. In fact, many long-term import contracts were negotiated by U.S. pipelines on the assumption that lower priced domestic gas would continue to be available to offset higher cost imports and that competing oil prices would continue to rise. The Natural Gas Policy Act of 1978, which established a new system of price controls on domestic gas, reinforced the economic rationale of long-term import arrangements for high-priced gas. These economic factors, along with the determination of U.S. pipeline companies to protect against recurrence of the gas shortages experienced in the 1970's, were the major impetus behind many import arrangements in effect today.

Few foresaw five years ago the gas deliverability surplus that exists in the United States today. The effects of the economic recession, falling world oil prices, conservation efforts, and the increasing ability of industry to switch between oil and gas have lowered the demand for natural gas. This decreased demand—combined with long-term contracts containing high take-or-pay requirements for expensive domestic and imported gas, and the pricing regulations of the NGPA—has had severe economic consequences for the American gas consumer.

The cause of the situation can be traced to government regulation. In particular, wellhead price controls imposed by the NGPA, with 28 categories of gas at different prices, have thwarted the effects of supply and demand that otherwise would force competitive pricing and supply arrangements. Legislative proposals to reform the NGPA are currently before the Congress, and the Administration has proposed—and supports—legislation that removes price controls on gas and allows market forces to operate.

In its efforts to deregulate natural gas, the Administration has considered the question of legislative or administrative action affecting imported gas and has held the position that U.S. governmental action requiring changes to existing gas import contracts is inappropriate. While it is recognized that many import arrangements are similar to domestic supply contracts, with inflexible take-or-pay and pricing terms, important distinctions exist between international and domestic contracts that require a different approach to the problems associated with gas imports.

The foremost distinction is the matter of jurisdiction. Gas import arrangements are international commercial agreements, subject to the policies and laws of both the buyer's and the seller's governments. United States trade policy strongly supports contract sanctity as an important factor in international commercial transactions. Unilateral legislative or administrative action by the government to change agreements undermines this policy and the long-standing principles generally adhered to by this country in conducting trade.

Another distinction is the long-term need for, and reliance on, imported gas the the United States. While the U.S. is now experiencing a domestic gas deliverability surplus, the situation will likely change in the future. Governmental action that, in effect, unilaterally renegotiates gas import contracts to the short-term advantage of the U.S. could jeopardize gas import supplies when the demand for imported gas increases in the future.

The inappropriateness of unilateral governmental action to modify existing import arrangements does not argue against the need for changes. There is ample evidence that most imported gas is not competitive in the markets served, placing a heavy financial burden on U.S. gas consumers. Present import arrangements have all been subject to U.S. government regulatory review and authorization pursuant to provisions of the Natural Gas Act under policies of the former Federal Power Commission and, since 1977, the Department of Energy. The decisions on import applications issued by the FPC and the Administrator of the Economic Regulatory Administration (under authority delegated by the Secretary of Energy) have constituted governmental policy on natural gas imports.

In view of today's changed circumstances and the need to establish natural gas trade on a market-competitive basis, it is appropriate that the previous policies be assessed and policy changes be made, as needed. The policy guidelines set forth here are designed to establish natural gas trade on a market-competitive basis and to provide immediate as well as long-term benefits to the American economy from this trade.

The application of the policy to gas import regulatory proceedings is also set forth, as are changes in the regulatory responsibilities for imported gas shared by the Economic Regulatory Administration and Federal Energy Regulatory Commission. The Department of State, with its primary responsibility for foreign policy, will continue to be consulted on the foreign policy aspects of gas import regulatory decisions.

Gas Imports Policy Goal

The goal of these policy guidelines conforms with the goal of the President's 1983 National Energy Policy Plan " * * * to foster an adequate supply of energy at reasonable costs." The U.S. government has adopted two strategies to achieve this goal:

- To minimize federal control and involvement in energy markets, and
- To promote a balanced and mixed energy resource system.

The government's objective in the area of natural gas imports is that a supply of gas supplemental to domestic production be available to the American consumer at competitive prices, while avoiding undue dependence on unreliable sources of supply.

The market, not government, should determine the price and other contract terms of imported gas. U.S. buyers should have full freedom—along with the responsibility—for negotiating the terms of trade arrangements with foreign sellers. The federal government's primary responsibility in authorizing imports should be to evaluate the need for the gas and whether the import arrangement will provide the gas on a competitively prices basis for the duration of the contract while miminizing regulatory impediments to a freely operating market. In addition, the government must determine that the U.S. does not become unduly dependent on unreliable supplies.

The policy and regulatory guidelines herein will accomplish several important objective. First, they outline the basis upon which the federal government, to the extent that it regulates natural gas trade, concludes that future gas trade should be conducted. Suppliers of imported gas, and governmental authorities regulating the export of this gas, will have the benefit of knowing the policy and regulatory considerations that will be applied by this government in authorizing gas imports.

Second, the guidelines establish a regulatory framework for buyers and sellers to negotiate contracts based on traditional competitive and market considerations, with minimal regulatory constraints and conditions. The government, while ensuring that the public interest is adequately protected, should not interfere with buyers' and sellers' negotiation of the commercial aspects of import arrangements. The thrust of this policy is to allow the commercial parties to structure more freely their trade arrangements, tailoring them to the markets served. Thus, with the presumption that commercial parties will develop competitive arrangements, parties opposing an import will bear the burden of demonstrating that the import arrangement is not consistent with the public interest.

Third, the regulatory procedures and process are being simplified and rendered more expeditious, permitting prompter government review of proposed import arrangements.

Background on U.S. Gas Imports

In 1938 the Congress passed the Natural Gas Act, which assigned the Federal Power Commission responsibility, under section 3, for authorizing imports and exports of natural gas. The FPC was required to grant import and export authorizations unless it determined that they would "not be consistent with the public interest." Prior to the 1950's, imports of gas were negligible, with section 3 proceedings primarily involving gas exports.

In the early 1950's, the FPC started to authorize gas imports from Canada and Mexico. Imports from Mexico began in 1952, reaching about 50 Bcf annually in the mid-sixties, and by 1982, nearly 100 Bcf annually. Imports from Canada in the early 1950's were small, amounting to approximately 3 Bcf per year. The demand for Canadian gas increased, however, with annual imports in the 1970's averaging approximately 900 Bcf. Canadian gas exports in 1983 amounted to 713 Bcf, representing 78 percent of all U.S. natural gas imports.

Until the mid-1970's, the price for Canadian gas was negotiated by U.S. buyers and Canadian sellers on a cost-of-service basis.(*1*) The prices negotiated differed depending on the point of importation and market factors. The Canadian government, however, maintained the requirement of government approval of gas export prices.

As the volume of gas exports increased in the mid-1970's, the Canadian government took a more active pricing role, with the National Energy Board requiring exported gas to be priced "in relation to energy alternatives in the United States." (*2*) In 1973, after finding that gas exports were under-priced in relation to alternative fuels in the U.S., the NEB pursuaded exporters to increase prices, and in 1975, directed price escalations that increased the average border price from $1.00 to $1.60 (Cdn) per MMBtu. This development essentially ended the pricing of Canadian gas through buyer-seller negotiations.

In 1976, the NEB proposed a further increase in the average border price together with differentiated border prices set by the Canadian government that significantly raised the costs to U.S. customers. With the government of Canada now acting as a single seller of Canadian pipeline gas to the United States and about to unilaterally impose a system of differential border prices, the U.S. government objected. In a series of government-to-government consultations, the United States strongly opposed the price increases and the manner in which they were being determined without reliance upon buyer-seller negotiations. Rather than accept differential prices determined by the Canadian government, the U.S. proposed the concept of a uniform border price, which the Canadian government adopted in June 1976.

By April 1977, Canada had become a substantial net importer of crude oil, and the NEB determined that exported gas would be priced on the basis of the cost of displacing imported crude oil in Eastern Canada with Canadian gas. This concept—called "substitution value"—became the main criterion for the Canadian government's determination of the export price of gas. Because of the rapid escalation of the price of imported oil in the late 1970's, the NEB, using the substitution value concept, raised the border price six times between 1977 and 1981—from $1.94 (Cdn) to $4.94 (U.S.) per MMBtu.(*3*) These increases were approved by U.S. regulatory agencies because of rising prices of alternate fuels in the U.S.

Also in 1977, the Department of Energy Organization Act was passed by Congress. This Act abolished the Federal Power Commission and transferred authority over gas imports to the Secretary of Energy. The Secretary delegated primary responsibility for authorizing imports to the Administrator of the Economic Regulatory Administration. In reviewing gas import applications under section 3 of the Natural Gas Act, the ERA Administrator followed the guidelines set forth by the Secretary that required consideration of "the price proposed to be charged at the point of importation." (*4*) To this end, the Administrator assessed the reasonableness of the unit cost of an import on a case-by-case basis, using

the price of alternate fuels in the relevant geographic region as a basis for comparision.

When, in January 1980, the NEB announced an increase in the export price from $3.45 to $4.47 per MMTu, questions were raised by U.S. energy officials as to whether the Canadian substitution value approach resulted in reasonble prices to U.S. gas consumers. Discussions on this issue were held with Canadian energy officials in February 1980. On March 25, 1980, Canadian Energy Minister Lalonde proposed in a letter to U.S. Secretary of Energy Duncan a "Statement of Principles on Canadian Gas Export Pricing." This proposal suggested that Canadian gas exports be based on the average cost of crude oil imported into Eastern Canada, with certain transportation adjustments.

Secretary Duncan responded on March 26, 1980, that "To the extent the pricing mechanism * * * meets our regulatory requirements * * * [he] would support this mechanism for the pricing of Canadian natural gas." This exchange of letters constitutes what is now sometimes called the "Duncan-Lalonde agreement."

U.S. energy officials belived this understanding would result in greater price predictability and market stability. The Economic Regulatory Administration began using a national comparison test instead of comparing the import price with alternate fuels prices in a particular geographic region. The agency developed a composite alternate fuel oil price based on prices in major U.S. markets.(5) This method of measuring alternate fuels prices was considered appropriate when assessing a uniform border price for Canadian gas. It also provided gas importers guidance for use in negotiations with Canadian suppliers.

Near the time of the Duncan-Lalonde letters, new volumes of Mexican gas began to be imported. Uniformity in border prices for Canadian and Mexican gas was viewed by the U.S. as a desirable policy objective, and the ERA thus established a maximum authorized border price for Mexican gas equal to the Canadian border price.(6)

During the late 1960's and early 1970's, several American firms introduced plans to import liquefied natural gas from Algeria and Indonesia in the face of projected declines in U.S. gas supplies. Although Boston Gas Company occasionally imported Algerian LNG during the late 1960's, the Distrigas Corporation of Boston became the first regular LNG importer in 1971, with an authorization to import annually 15.4 million MMBtu from Algeria, primarily for winter peaking purposes in New England, New York, and New Jersey.

In early 1978 Columbia LNG Corporation, Consolidated System LNG Company and Southern Energy Company began to import approximately one Bcf per day of Algerian LNG for use in the mid-Atlantic and southeastern states. However, this project was suspended and effectively terminated in April 1980 when the parties failed to agree on price changes proposed by Sonatrach, the Algerian exporter. Several other proposed LNG import projects also were terminated, either after the ERA found that the pricing methods did not contain adequate consumer safeguards or because the projects encountered environmental opposition. On the other hand, the FPC authorized in 1977 an LNG import by the Trunkline LNG Company, which began in 1982 to import approximately 450,000 Mcf per day of Algerian LNG for base load use in the Midwest.

By the fall 1982, Canadian gas imports were entering U.S. pipelines in volumes and at a price that began to be uncompetitive in most U.S. markets. Consumers served by Canadian gas, as well as high-cost domestic gas and Algerian LNG, experienced large increases in the price of delivered gas. These circumstances were especially acute in the north central and western coastal states.

Late in 1982, informal discussions between the U.S. and Canadian governments began on problems relating to gas trade. These were followed by reactivation of the U.S.-Canadian Energy Consultative Mechanism (ECM), a forum established in 1979 by the governments for periodic exchanges on bilateral energy issues. A meeting of the ECM was held in February 1983, at which natural gas trade was a key agenda item; and following working group meetings and informal diplomatic discussions, a second ECM session was held in late September. At this second meeting, the U.S. proposed discontinuance of the uniform border price and the establishment of a new trade framework designed to put gas trade on a market-sensitive basis.

During 1983, the Canadian government announced three actions that affected the pricing of gas exports. In April it announced a reduction in the uniform border price from $4.94 to $4.40 per MMBtu and, in July, a price-discount arrangement, termed the Volume Related Incentive Pricing (VRIP) program, whereby gas purchased above certain base volumes is discounted to $3.40 per MMBtu.

A third action was taken on November 1, which involved changes to the VRIP program giving U.S. importers more flexibility in purchasing discounted gas.

Diplomatic efforts relating to imported gas from Algeria and Mexico were also undertaken in 1983. Officials from the departments of State and Energy held discussions with energy officials of the Algerian government, and although no governmental agreements or understandings encompass U.S.-Algerian gas trade, these discussions enabled both governments to review fully the current conditions and problems relating to their gas trade. Algerian officials received briefings on the U.S. gas market, the competitive position of Algerian gas, and U.S. policy direction with respect to domestic and imported gas. Similarly, U.S. energy officials met with Mexican officials in Mexico City in March 1983 to discuss U.S. gas market conditions. Mexico matched Canada's reduction of the border price from $4.94 to $4.40 per MMBtu on May 1, 1983.

During this period when the U.S. demand for imported gas dropped significantly, U.S. importers began efforts to renegotiate their contracts with foreign suppliers. These efforts resulted primarily in volume relief, providing substantial savings to U.S. gas consumers. Most recently, the importer of the largest volume of Algerian gas announced that effective December 12, 1983, it was suspending LNG purchases for an indefinite period. At this time, contract renegotiation activity between U.S. importers and foreign sellers continues, with some renegotiated contracts now before regulatory agencies for approval.

The Review of Gas Import Policy

During the past year an interagency review of U.S. gas import policy and regulations was undertaken involving the Department of Energy, Federal Energy Regulatory Commission, and Department of State, along with consultations with members of Congress and congressional staff. Public participation came primarily through two public conferences on imported gas sponsored by the Department of Energy.(7)

The first conference, held January 18, 1983, addressed problems of existing gas import arrangements. The majority of the conference participants—which included pipeline companies, distribution companies, end-users, state agencies, and consumer interests—asserted that a more flexible approach to pricing was needed, that prices

should be set by direct buyer-seller negotiations, and that governments should establish a simplified regulatory review process. Many indicated that load loss was a result of NGPA-allowed price rises, provisions of current contracts with high take-or-pay clauses and conservation effects from high gas costs—which could be reduced or reversed if buyers could negotiate more competitive prices and more reasonable take-or-pay provisions.

The second conference, held September 7–9, 1983, addressed specific issues relating to the implementation of policy changes recommended at the first conference. The majority of the nearly 90 presentations stated that the U.S. and Canadian governments should eliminate the uniform border price and develop a regulatory system that would allow for direct buyer-seller negotiations. General guidelines were favored over strict regulatory standards or criteria, with preference that the government maintain an oversight role to ensure that the interests of importers and their customers are protected.

The conclusions reached from the policy review process appear to be shared broadly by all interested parties to the gas trade issue. There is a common view that imported gas is generally not competitive in today's U.S. markets and that changes are required in governmental policy and regulations to bring about competitive gas trade. Buyers and sellers believe that government regulation prevents freely negotiated import arrangements and market-responsive adjustments to these arrangements. Virtually all parties believe that the governments, in regulating the terms and conditions of gas import trade, have previously sanctioned arrangements that are now uncompetitive in the marketplace.

Policy Guidelines

The U.S. policy goal for gas imports, as earlier stated, is to have a supply of natural gas supplemental to domestic production available on a competitive, market-responsive basis, while avoiding undue dependence on unreliable sources of supply. Government regulation of imports should facilitate trade arrangements consistent with this policy goal.

Section 3 of the Natural Gas Act requires the government to authorize an import of natural gas unless "the proposed importation will not be consistent with the public interest" (emphasis added).

Congress did not define "public interest," thus giving broad discretion to the government in establishing criteria that an importer must fail to meet for the government to deny an authorization to import. The policy guidelines herein are intended to provide a clear definition of public interest.

The policy cornerstone of the public interest standard is competition. Competitive import arrangements are an essential element of the public interest, and natural gas imported under agreements that provide for the sale of gas in volumes and at prices responsive to market demands largely meets the public interest test. On the other hand, import arrangements with contract terms and conditions that restrict the competitiveness of the gas over time should be considered, presumptively, not in the public interest.

This policy approach presumes that buyers and sellers, if allowed to negoitate free of constraining governmental limits, will construct competitive import agreements that will be responsive to market forces over time. The specific commerical terms and conditions of a particular arrangement should be negotiated by the parties pursuant to the discrete requirements of the buyer's market and not directed by government regulators. The government's role in authorizing such agreements should be to evaluate whether the arrangement assures the competitiveness of the import throughout the contract period and to provide a review process whereby affected parties have sufficient opportunity to demonstrate that the import is not consistent with the public interest. Those market participants who stand to benefit or suffer as a result of the importation have the best available knowledge of their market and should provide the information upon which the competitiveness of the arrangment can be judged.

The price paid for imported gas by U.S. importers has often been considered the key test of an import's competitiveness. The price of gas, however, is only one factor in determining the market competitiveness of the import. Pricing considerations, standing alone, will not longer be the base for authorizing or denying an import application, or for modifying or revoking an authorization. The emphasis will be on the provisions of the import agreement that establish the basis price and that allow price adjustments during the life of the agreement.

While the competitiveness of an import arrangement is now the primary consideration for authorization, other considerations will continue to be relevant. The security of the foreign supply, in particular, remains a regulatory consideration in meeting the objective of avoiding undue dependence on unreliable sources of supply. Need will continue as a consideration; however, it is recognized to be a function of competitiveness. Under competitive gas import trade arrangements, buyers will be presumed to have markets for gas actually purchased, unless otherwise demonstrated by participants in the regulatory process.

Thus, proposed import arrangements that are found competitive are presumed to have demonstrated the need for the import. National energy requirements will remain a factor in assessing long-term import arrangments, as the nation's energy security is a continuing policy consideration.

Finally, it is recognized that uniform regulatory strictures do not facilitate the establishment of competitive, market-responsive import arrangements and will not be applied. The terms and conditions of an arrangement that is competitive for one market may not be competitive in another. Thus, new import arrangements dependent on substantial capital financing that will provide new supplies to regions needing additional gas may require contract provisions, such as minimum volumes and prices, that may not be competitive in other regions. There also may be unique situations involving extensions or modifications of existing gas import arrangements, such as the prebuild portions of the Alaska Natural Gas Transportation System, that merit special consideration.

Regulatory Guidelines

Pursuant to section 3 of the Natural Gas Act and the Delegation Order from the Secretary of Energy to the ERA Administrator, an application to import gas must be approved unless it is determined that the import is not consistent with the public interest. This determination is based on a number of "considerations" addressed in an import authorization proceedding and stated in the Delegation Order. These considerations provide, in effect, the test that a proposed import arrangement must fail for an authorization to be denied. These policy guidelines provide notice of the manner in which the Administrator will exercise authority under section 3 of the Natural Gas Act to review natural gas import applications. The guidelines do not establish binding and inflexible rules; rather they set forth certain rebuttable presumptions and contemplate flexible application of the considertions outlined below to the facts of individual cases.

The following are the considerations now applicable to import arrangements

which, as of this date, have not received Section 3 approval by the Economic Regulatory Administration or the Federal Energy Regulatory Commission. They shall apply to applications currently pending that seek approval of amendments or extensions to existing import arrangements, as well as applications involving new imports. The application of these guidelines to authorizations previously granted with no pending application for amendment or extension is addressed in the discussion below on implementation. These considerations are contained in Delegation Order No. 0204–111 signed by the Secretary of Energy on February 15, 1984.

The competitiveness of the import

The terms and conditions of the gas purchase contract, taken together, must provide a supply of gas that the importer can market competitively over the term of the contract. The contract arrangement must be sufficiently flexible to permit pricing and volume adjustments, as required by market conditions and available competing fuels, including domestic natural gas. Contract flexibility is a function of certain provisions which may include, but are not limited to: the volume of gas under contract, base price, price review or adjustment mechanisms, take-or-pay obligations, make-up provisions, length of the contract, and other terms which may affect marketability of the gas. No prescribed set of provisions are being dictated as determinative of contract flexibility, allowing the importer to negotiate the import arrangement it considers necessary for the gas to remain marketable over the life of the contract. The importer will be required to demonstrate that the provisions in the proposed import arrangement, collectively, ensure that the gas will be competitive.

Contracts should also contain provisions to protect the parties in the event of changes in the circumstances in which the contract is expected to operate, and to permit contractual adjustments in such circumstances. Examples of such provisions include renegotiation clauses, arbitration clauses, "market-out" clauses, and similar arrangements. Again, no specific or predetermined provision to permit contract adjustments is favored, allowing the contracting parties discretion to determine the approach most suitable to their import arrangement.

Import agreements that are negotiated between buyer and seller should result in contracts that provide a competitive energy source for the duration of the import. The competitiveness of an import arrangement will not be assessed by a narrow inquiry into individual contract terms but rather a consideration of the whole fabric of the arrangement. Those opposing an import have to show that the arrangement, as a whole, is not competitive or sufficiently flexible to respond to changing market conditions.

Need for the natural gas

The need for the imported gas will be addressed in terms of the marketability of the proposed import. Need for a gas supply is intrinsically related to its anticipated marketability. Thus, if the imported gas is competitive in the proposed market area and, through its contract terms, will remain competitive throughout the contract period, then the rebuttable presumption exists that the gas is needed in that market. To the extent that there is a specific objection on the grounds of need for the import, the focus should be on the overall energy requirements in the market that can be competitively met by domestic natural gas and other fuels.

National energy requirements will also be a factor, particularly in assessing long-term import arrangements, as the energy security of the nation remains a policy consideration.

Security of supply

The security of gas supply and its transportation to the U.S. border remain important components of the public interest, especially those under long-term arrangements. An import will be considered secure if it does not lead to undue dependence on unreliable sources of supply. Thus, imports involving relatively larger volumes and longer time periods must demonstrate relatively greater reliability of supply than smaller scale imports for a shorter time period in the application for authorization.

Security of a proposed import supply can be demonstrated by reference to the historical reliability of the supplier to provide a dependable source of gas to the United States and other countries. Reference can be made to any gas reserves committed to the import arrangement for the term of the contract.

Attention will be given to the advantage provided to the nation by a reliable supply of imported natural gas, which adds to the diversity of energy sources and provides an added measure of energy security during any period of energy shortage or emergency.

In additon to the above considerations, the Administrator will consider international trade policy, foreign policy, and national security interests that may bear on an import authorization. In so considering these and other factors as may be appropriate, the Department of State will be consulted in accordance with section 102(10) of the DOE Organization Act.

Regulation of Gas Imports by ERA and FERC

Under the Department of Energy Organization Act, the Secretary of Energy was given responsibility for implementing the provisions of the Natural Gas Act relating to natural gas imports and exports. This authority, formerly vested in the Federal Power Commission, was given to the Secretary in recognition that a policy official accountable to the President should have jurisdiction over the regulation of gas imports to the extent that the regulatory decisions affect national and international energy policy, foreign policy, and national security interests.

The Department of Energy legislation also established the Federal Energy Regulatory Commission, in which was vested the authority to regulate certain aspects of domestic natural gas within the United States. This authority, exercised *inter alia* under the Natural Gas Act and Natural Gas Policy Act, includes the regulation of wellhead prices and transportation rates for gas produced in the United States and gas transported in interstate commerce to the American consumer. In view of the fact that imported gas reaches the consumer through the same transportation systems that deliver domestically produced gas, the Secretary delegated to the FERC certain regulatory responsibilities for imports that it exercises over domestic gas, including siting, construction of facilities, and ratemaking. This authority was delegated to the FERC with the recognition that the Secretary maintained the policy responsibilities for gas imports, and that the FERC should exercise its authority in a manner consistent with the gas import policy determinations established by the Secretary.

In delegating his responsibility to authorize imports to the Administrator of the Economic Regulatory Administration, the Secretary made an exception for imported gas transported through the Alaska Natural Gas Transportation System (ANGTS). Authority was delegated to the FERC to authorize the importation of Canadian gas using the "prebuild" portions of the system while these portions were being financed, constructed, and placed in

initial operation, along with the financing of the overall ANGTS project.

The division of regulatory responsibilities for imported natural gas brought about by the Department of Energy Organization Act, and the assignment of these responsibilities to the ERA Administrator and the FERC, presented inherent problems of coordination and regulatory consistency that did not exist when this responsibility was all exercised by the FPC. While the ERA and the FERC have carried out their respective responsibilities in an effective and conscientious manner, the lines of jurisdiction and authority between the two agencies have not been entirely clear. This lack of clarity is a concern that was expressed by a number of gas importers during the policy review process, with the observation that the ERA and the FERC sometimes both review the same issues.

While a two-part regulatory process is unavoidable under the enabling legislation, some efficiencies can be achieved through clarification of the ERA and FERC gas import responsibilities and through streamlining some aspects of the process. This is the objective in the issuance of new delegation orders to the ERA Administrator and the Commission. These revised orders seek to make a clearer distinction between the responsibility of the Administrator in exercising the Secretary's authority to approve natural gas imports and the FERC's responsibility to regulate the imported gas within the domestic natural gas system. These orders are also issued with the goal of achieving uniform application of these policy guidelines to all natural gas imports.

Under the new delegation orders, all gas imports—including gas transported through the ANGTS prebuild—will be authorized by the ERA Administrator. Delegation Order No. 0204–8, which gave this authority for ANGTS to the FERC, is being rescinded. The Administrator will exercise this authority consistent with the policy guidelines set forth in this notice and contained in new Delegation Order No. 0204–111.

The FERC, under the revised delegation orders, maintains its responsibilities for exercising sections 4, 5, and 7 authority under the Natural Gas Act over gas authorized for import by the Administrator. Gas authorized for importation is subject to the FERC's review of issues pertaining to siting, construction, and operation of pipeline facilities, and to the rates proposed to be charged for the interstate transportation and sale of the gas. The FERC review, in effect, will address the regulatory matters relevant to the imported gas upon its entry into the United States and as it flows through domestic gas transportation systems. In its regulatory decisions on a gas supply authorized for importation, the Commission will adopt the terms and conditions attached by the ERA Administrator to the import authorization, thus acting consistently with the determinations made by the Administrator and the policy considerations reflected in the authorization.

The goal of this Administration is to have a deregulated natural gas market, whereby buyers and sellers operating entirely under market forces can provide gas to consumers at prices competitive with alternative fuels. Until this goal is fully reached, natural gas transported and sold within the United States will remain subject to certain regulatory considerations. Gas delivered to U.S. markets from foreign sources is subject to these considerations. Under these policy guidelines and delegated authorities, the ERA Administrator and the FERC can fulfill their respective regulatory responsibilities in a manner that improves the regulatory process while establishing competitive natural gas trade.

Implementation

The policy guidelines herein set forth are now effective, and the regulatory considerations presented above and contained in the new delegation orders will be applied to all gas import arrangements that have not received section 3 authorization by either the Economic Regulatory Administration or Federal Energy Regulatory Commission. Import applications, including requests for modification of existing authorizations and authorizations of new contracts currently pending before either agency, will be reviewed within this new policy and regulatory framework by the Economic Regulatory Administration. Pending applications that require expeditious approval and that do not fully comport with these guidelines may be granted conditional authorizations.

Pursuant to Section (j) of Delegation Order No. 0204–111, imports previously authorized by the ERA and FERC shall remain in full force and effect unless or until they are rescinded, amended or superseded through appropriate regulatory proceedings. The ERA will not on its own motion initiate such proceedings unless an agreement between the United States and the government of a gas exporting country so requires. The guidelines will apply to pending cases including requests to modify existing authorizations. The ERA Administrator will issue a procedural order that specifies the dockets that are directly and immediately affected by these new guidelines.

U.S. companies that import natural gas under arrangements that are not fully consistent with these policies and the provisions of Delegation Order No. 0204–111 are encouraged to negotiate changes to such arrangements to bring them into conformity with these policies and provisions. The ERA will give prompt attention to import authorization amendments submitted by importers as a result of these negotiation efforts. To the extent that such amendments bring an import arrangement more into conformity with these guidelines, they will benefit from the presumption that they are in the public interest, and opposing parties will bear the burden to rebut the presumption.

These policy guidelines and regulatory changes are designed to avoid instability or uncertainty in existing natural gas trade and establish a smooth transition to competitive trade arrangements, with minimal regulatory requirements and governmental involvement. The policy guidelines should permit parties engaged in gas trade to craft arrangements competitive for the markets served. The import authorization process is designed to fulfill the governments's statutory responsibilities without regulating the specific terms and conditions of individual trade arrangements.

The delegation orders are effective February 22, 1984, the date of publication in the **Federal Register.**

Issued in Washington, D.C. on February 15, 1984.

Donald Paul Hodel,

Secretary of Energy.

Notes

1. Cost of service is defined as the sum total of proper operating and depreciation expenses, taxes, and a reasonable return on the net valuation of the property devoted to providing natural gas service. A two-part demand-commodity rate, with periodic price adjustments, is then designed to produce revenues equivalent to the cost of service.

2. National Energy Board Act.

3. On January 3, 1977, $1.94 (Cdn) was equal to $193 (U.S.).

4. DOE Delegation Order No. 0204–54 to the Economic Regulatory Administration (44 FR 56735, October 2, 1979). In recognition of the expertise of the Federal Energy Regulatory Commission in the areas of interstate transportation and resale of natural gas and construction and operation of facilities, the Secretary delegated to FERC authority over certain activities related to gas imports. (DOE Delegation Order No. 0204–55 to the Federal

Energy Regulatory Commission [44 FR 56735, October 2, 1979]).

5. DOE/ERA Opinion No. 14B, *Inter-City Minnesota Pipelines Ltd. Inc., et al.*, 1 ERA para 70508 (*Federal Energy Guidelines*, May 15, 1980).

6. DOE/ERA Opinion No. 16A, *Border Gas, Inc.*, 1 ERA para 70511 (*Federal Energy Guidelines*, May 15, 1980).

7. 47 FR 57756, December 28, 1982; 48 FR 34501, July 29, 1983.

[Delegation Order No. 0204-110]

Rescission of Delegation to the Federal Energy Regulatory Commission

Pursuant to the authority vested in me as Secretary of Energy, Department of Energy Delegation Order Nos. 0204–8 and 0204–14 are hereby rescinded.

All actions pursuant to Delegation Order Nos. 0204–8 and 0204–14 taken prior to and in effect on the date of this Order shall remain in full force and effect unless or until rescinded, amended or superseded.

This Order is effective February 22, 1984, the date of publication in the **Federal Register.**

Donald Paul Hodel,

Secretary of Energy.

[Delegation Order No. 0204-111]

To the Administrator of the Economic Regulatory Administration

Pursuant to the authority vested in me as the Secretary of Energy ("Secretary") by the Natural Gas Act (Act of June 21, 1938, ch. 556, 52 Stat. 821 (15 U.S.C. § 717)) ("NGA") and Sections 301(b), 402(f), and 642 of the Department of Energy Organization Act (Pub. L. No. 95–91, 91 Stat. 565 (42 U.S.C. § 7101 *et seq.*)), there is hereby delegated to the Administrator of the Economic Regulatory Administration ("Administrator") the authority under section 3 of the NGA to regulate the imports and exports of natural gas.

(a) The Administrator shall regulate imports (including place of entry) based on a consideration of such matters as the Administrator finds in the circumstances of a particular case to be appropriate, which may include, but are not limited to, the following matters:

1. Competitiveness of the import;
2. Need for the natural gas;
3. Security of supply.

(b) The Administrator shall regulate exports (including place of exit) based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator finds in the circumstances of a particular case to be appropriate.

(c) In exercising the authority delegated by this Order, the Administrator may attach such terms and conditions as the Administrator shall determine to be appropriate.

(d) The authority delegated by this Order does not include the authority to approve the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports, except the Administrator is authorized to disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports, on the basis of matters considered pursuant to paragraphs (a) and (b) of this Order.

(e)(1) With respect to ERA Docket No. 77–001–LNG, in addition to the functions enumerated in paragraphs (a), (b) and (c) above (and notwithstanding paragraph (d) above), the Administrator is authorized to perform all functions related to the regulation of the importation and distribution of natural gas through, and construction and operation of, facilities at Oxnard, California.

(2) This delegation does not amend or supersede 10 CFR § 1000.1(d) (42 FR 55534, October 17, 1977) or DOE Delegation Order No. 0204–1.

(f) The authority delegated to the Administrator may be further delegated (except to the Federal Energy Regulatory Commission) in whole or in part, as may be appropriate.

(g) Paragraph 6 of Delegation Order No. 0204–4, is amended to read as follows:

"6. The functions delegated to the Administrator of ERA by Delegation Order No. 0204–111."

(h) This Order supersedes Delegation Order No. 0204–54.

(i) In exercising the authority delegated by this Order, or redelegated pursuant thereto, the delegates shall be governed by the rules, regulations and procedures of the Department of Energy and the policies prescribed by the Secretary or the Secretary's delegate.

(j) All actions pursuant to any authority delegated prior to this Order, or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended, or superseded.

(k) Nothing in this delegation shall preclude the Secretary from exercising any of the authority so delegated whenever in the Secretary's judgment the exercise of such authority is necessary or appropriate to adminsiter the functions vested in the Secretary.

This Order is effective February 22, 1984, the date of publication in the **Federal Register.**

Donald Paul Hodel,

Secretary of Energy.

[Delegation Order No. 0204-112]

Federal Energy Regulatory Commission

Pursuant to the authority vested in me as the Secretary of Energy ("Secretary") by sections 301(b), 402 (e) and (f), and 642 of the Department of Energy Organization Act (Pub. L. No. 95–91, 91 Stat. 565 [42 U.S.C. § 7101 *et seq.*]) the Natural Gas Act (Act of June 21, 1938, ch. 556, 52 Stat. 821 [15 U.S.C. § 717]) ("NGA"), and Executive Order No. 10485, as amended by Executive Order No. 12038, there is hereby delegated to the Federal Energy Regulatory Commission ("FERC") the authority to perform the following functions with respect to the regulation of imports and exports of natural gas:

(a) Approval or disapproval of the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports, except when the Administrator of the Economic Regulatory Administration ("Administrator") exercises the disapproval authority delegated pursuant to paragraph (d) of Delegation Order No. 0204–111.

(b) All functions under sections 4, 5, and 7 of the NGA.

(c) Issue orders, authorizations, and certificates which the FERC determines to be necessary or appropriate to implement the determinations made by the Administrator under Delegation Order No. 0204–111 and by the FERC under this Order. The FERC shall not issue any order, authorization, or certificate unless such order, authorization, or certificate adopts such terms and conditions as are attached by the Administrator pursuant to the authority delegated to the Administrator by Delegation Order No. 0204–111.

The delegate(s) may take such action as may be necessary and appropriate to carry out the functions delegated by this Order.

This Order supersedes Delegation Order No. 0204–55.

The authority delegated to the FERC may be further delegated within the FERC, in whole or in part, as may be appropriate.

In exercising the authority delegated by this Order, or redelegated pursuant thereto, the delegates shall be governed by the rules, regulations, and procedures of the FERC and shall be guided by the policies prescribed by the Secretary or the Secretary's delegate.

All actions pursuant to any authority delegated prior to this Order, or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended, or superseded.

Nothing in this Order shall preclude the Secretary from exercising any of his authority so delegated whenever in the Secretary's judgment the exercise of such authority is necessary or appropriate to administer the functions vested in the Secretary.

This Order is effective February 22, 1984, the date of publication in the **Federal Register.**

Donald Paul Hodel,

Secretary of Energy.

[FR Doc. 84-4748 Filed 2-22-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Natural Gas Imports; Procedural Order Applying New DOE Policy Guidelines Relating to Importation of Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of a procedural order.

SUMMARY: The Secretary of Energy has issued new policy guidelines and delegation orders to the Administrator of the Economic Regulatory Administration and to the Federal Energy Regulatory Commission relating to the importation of natural gas. The Administrator has issued a procedural order initiating action to begin implementation of those new guidelines. The procedural order is attached as an appendix to this notice and is being published concurrently with the policy guidelines and delegation orders.

FOR FURTHER INFORMATION CONTACT:

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Michael T. Skinker (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6667

Issued in Washington, D.C., February 16, 1984.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

United States of America Department of Energy—Economic Regulatory Administration

Company name	*ERA Docket Nos.*
Borders Gas, Inc	79-31-NG.
Boundary Gas, Inc	81-04-NG.
Distrigas Corporation	77-011-LNG, 82-13-LNG.
Gas Service, Inc.; Manchester Gas Company.	81-22-LNG.
Great Lakes Gas Transmission Company.	80-02-NG, 81-01-NG, 83-07-NG.
Inter-City Minnesota Pipelines, Ltd.	80-01-NG, 82-15-NG.
Michigan Wisconsin Pipe Line Company.	80-04-NG, 81-18-NG, 81-34-NG.
Midwestern Gas Transmission Company.	80-06-NG, 81-16-NG, 81-32-NG.
Midwestern Gas Transmission Company; Great Lakes Gas Transmission Company.	83-08-NG.
Montana Power Company.	80-03-NG, 81-21-NG.
Natural Gas Pipeline Company of America.	82-01-NG.
Natural Gas Pipeline Company of America; Michigan Wisconsin Pipe Line Company; Tennessee Gas Pipeline Company; Texas Eastern Gas Pipeline Company.	79-15-NG.
Northern Natural Gas Company.	79-24-NG, 82-09-NG, 82-11-NG.
Northwest Pipeline Corporation.	80-05-NG, 81-31-NG, 83-06-NG.
Pacific Gas Transmission Company.	80-07-NG, 81-09-NG, 82-16-NG.
St. Lawrence Gas Company, Inc.	80-09-NG, 81-13-NG.
Tennessee Gas Pipeline Company.	81-24-NG, 82-10-NG, 82-13-NG.
Texas Eastern Gas Pipeline Company.	82-05-NG, 82-07-NG.
Texas Gas Transmission Corporation.	82-08-NG.
Transcontinental Gas Pipe Line Corp.	80-14-NG, 81-29-NG, 81-30-NG.
Transcontinental Gas Pipe Line Corp.; Tennessee Gas Pipeline Company.	79-08-NG.
Transcontinental Gas Pipe Line Corp.; Algonquin Gas Transmission Company; Texas Eastern Gas Pipeline Company.	81-02-NG.
Vermont Gas Systems, Inc.	80-10-NG, 83-09-NG.

Order Directing Applicants With Pending Gas Import Applications To Supplement Those Applications, Directing Importers With Existing Authorizations, To Report on Conformance of Arrangements With Guidelines, Providing Guidance on Alaska Natural Gas Transportation System Filings, and Terminating Suspended Proceedings

February 16, 1984.

I. Introduction

On February 15, 1984, the Secretary of Energy issued new policy guidelines and delegation orders to the Administrator of the Economic Regulatory Administration (ERA) and to the Federal Energy Regulatory Commission (FERC) relating to the authorization of imports of natural gas into the United States. The guidelines set forth a new policy designed to encourage greater participation of buyers and sellers of imported natural gas in establishing price and contract terms, and to ensure that import arrangements result in gas being imported on a competitive and market-responsive basis.

This order initiates action to implement the new policy guidelines. It requires applicant that have pending import applications and authorization amendments before the ERA to supplement their applications. The order also requests all importers with existing authorizations to assess their current import arrangements from the standpoint of conformity with the new policy and regulatory considerations, and to report to the ERA the results of this assessment. This report should include information on modifications the importer believes would be required for the arrangement to comply fully with the policy guidelines. The order further terminates earlier proceedings involving flowing gas imports from Canada that were suspended on December 16, 1980.

II. Pending Applications

This section addresses applications to import natural gas now pending before the ERA listed in Appendix A.[1] Importers with applications for new import authorizations, or modifications or extensions of existing authorizations, now pending before the ERA should notify the ERA on or before April 16, 1984, whether their applications meet or will require modification to meet the policy guidelines before being reviewed by the ERA. Applicants should review their pending applications to determine to what extent their proposed import arrangements are consistent with the policy guidelines and whether steps will be taken to renegotiate the contracts and amend the applications. This information should be submitted in writing and filed as a "supplement" to the application; copies should be served on all intervenors.

If importers wish the ERA to take action on pending applications, they should so state in their supplemental filings. For applicants who report that efforts will be undertaken to amend their arrangements to bring them into conformity with the guidelines, the ERA will defer further consideration until the amendments or new applications are filed. Applicants who determine not to pursue their import arrangements at this time may file notices to withdraw their current applications without prejudice to filing new applications at a later time.

III. Existing Imports

Previously authorized imports shall remain in full force and effect, unless or until they are rescinded, amended, or superseded through appropriate regulatory proceedings. The ERA will not on its own motion initiate such proceedings, unless an agreement between the United States and the government of a gas exporting country so requires. However, consistent with the policy goals and objectives set forth in the new policy guidelines, parties of currently authorized gas import arrangements that are not fully consistent with the new guidelines are encouraged to make every effort, working with all parties to their arrangement, to bring the arrangement into conformity with the new policy.

All importers with existing authorizations listed in Appendix B should review their existing arrangements for conformity with the new policy and should determine whether the contract terms and conditions need to be modified. On or before April 16, 1984, existing importers are requested to inform the ERA by letter of the results of this review, along with information on any modifications they deem necessary to bring their arrangement into conformity with the policy guidelines. Information on steps they intend to take to remedy these deficiencies is also requested. In addition, the letter should describe the progress made during the past year in adjusting import arrangements to respond to market problems through renegotiation as well as provide information on ongoing activities of this nature.

Applications to amend existing authorizations based on contract modifications resulting from this effort will be processed on an expedited basis, with a presumption that they are in the public interest. Opposing parties will bear the burden of rebutting this presumption.

IV. ANGTS Prebuild

The authority to approve the importation of natural gas that is transported through the Alaska Natural Gas Transportation System (ANGTS)—which previously has been exercised by the FERC—was delegated to the ERA by the Secretary of Energy on February 15, 1984, through Delegation Order No. 0204–110. All future applications for NGA section 3 authorization to import natural gas through the ANGTS should be made to the ERA. Action will be taken to transfer the section 3 portions of cases pending before the FERC to the ERA.

Two applications filed by Texas Gas Transmission Corporation (Texas Gas) to import gas through ANGTS now pending before the FERC in Docket Nos. CP82–403–000 and CP82–418–000 will be transferred to the ERA. At the time these cases are transferred, Texas Gas will be asked to comply with section II of this order.

Northwest Alaskan Pipeline Company (Northwest Alaskan) was recently issued conditional authorizations by the FERC in Docket Nos. CP78–123–020 and CP78–123–021 to import additional volumes of Canadian natural gas through the ANGTS for a period of time extending through October 31, 1992. The authorizations were specifically conditioned on Northwest Alaskan making a showing that the gas will be marketable and that the terms and conditions for its importation will not be inconsistent with the public interest. Since no final decision on these matters has been made, the section 3 proceedings will be conducted by the ERA after those portions of the cases relating to section 3 have been transferred from the FERC to the ERA. Therefore, any supplemental filing Northwest Alaskan may submit under its conditional authorizations should be made to the ERA.

V. Suspended Proceedings

A number of existing authorizations were previously the subject of ERA proceedings. Appendix C identifies these dockets. On May 15, 1980, the ERA issued DOE/ERA Opinion and Order No. 14B[2] in Docket No. 80–01–NG, *et al.*, which initiated proceedings to review the ERA's general import policy in nine consolidated dockets representing all the gas imports then flowing from Canada.

Similar proceedings paralleling those in Docket No. 80–01–NG, *et al.*, were ordered in *Transcontinental Gas Pipe Line Corporation, et al.*, Docket No. 79–08–NG,[3] and *Northern Natural Gas Company*, Docket No. 79–24–NG.[4] Further, in DOE/ERA Opinion and Order No. 24,[5] issued October 31, 1980, in Docket No. 80–14–NG, Transcontinental Gas Pipe Line Corporation was authorized to import natural gas from Canada by displacement, subject to such conditions as the ERA may order to conform with any policy and precedent established in Docket Nos. 80–01–NG, *et al.*, and 79–08–NG.

On December 16, 1980, the ERA suspended further consideration of the issues in Docket Nos. 80–01–NG, *et al.*, 79–08–NG, 79–24–NG, and 80–14–NG.

These proceedings are hereby terminated as a result of establishment of the new policy. The previously approved authorizations will remain in full effect as discussed in section III.

VI. Where to File

All filings shall be made to the Natural Gas Division Docket Room, RG–43, GA–007, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m.

Order

In accordance with the new policy guidelines and delegation orders issued by the Secretary of Energy relating to natural gas imports, and for reasons set

[1] Trunkline LNG Company's import project, Docket Nos. 82–12–LNG/83–04–LNG, is not addressed in this order because of the extensive record already developed and will be subject to a separate order.

[2] 1 ERA ¶ 70.508, Federal Energy Guidelines.

[3] See DOE/ERA Opinion and Order 17, issued July 7, 1980 (1 ERA ¶ 70.512), and the Prehearing Order issued August 12, 1980 (order unpublished).

[4] See DOE/ERA Opinion and Order 19, issued August 29, 1980 (1 ERA ¶ 70.518).

[5] 1 ERA ¶ 70.523.

forth above, it is hereby ordered pursuant to section 3 of the Natural Gas Act that:

A. Applicants with natural gas import authorizations pending before the ERA listed in Appendix A of this order are directed to supplement their existing applications providing the information required in section II. Supplemental filings shall be made on or before April 16, 1984.

B. All importers with existing authorizations listed in Appendix B shall review their import arrangements and report to the Administrator as discussed in section III of this order on or before April 16, 1984.

C. The suspensions initiated by four DOE/ERA orders dated December 16, 1980, Docket Nos. 80–01–NG, *et al.*, 79–08–NG, 79–24–NG and 80–14–NG, are terminated.

D. The proceedings initiated in ordering paragraph C of DOE/ERA Opinion and Order No. 14B, dated May 15, 1980, Docket No. 80–01–NG, *et al.*, and in ordering paragraph A of a DOE/ERA Prehearing Order, dated July 9, 1980, same docket, are terminated.

E. The proceedings initiated in ordering paragraph B of DOE/ERA Opinion and Order No. 17, dated July 7, 1980, Docket No. 79–08–NG, and in ordering paragraph A of a DOE/ERA Prehearing Order, dated August 12, 1980, same docket, are terminated.

F. The proceedings initiated in ordering paragraph E of DOE/ERA Opinion and Order No. 19, dated August 29, 1980, Docket No. 79–24–NG, are terminated.

Issued in Wasington, D.C., February 16, 1984.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

Appendix A—Pending Applications

Company name	*ERA Docket No.*
Transcontinental Gas Pipe Line Corporation; Algonouin Gas Transmission Company; Texas Eastern Gas Pipeline Company.	81–02–NG.
Transcontinental Gas Pipe Line Corporation.	81–29–NG.
Midwestern Gas Transmission Company.	81–32–NG.
Michigan Wisconsin Pipe Line Company.	81–34–NG.
Natural Gas Pipeline Company of America.	82–01–NG.
Texas Eastern Gas Pipeline Company.	82–05–NG.
Texas Eastern Gas Pipeline Company.	82–07–NG.
Texas Gas Transmission Corporation.	82–08–NG.
Tennessee Gas Pipeline Company.	82–10–NG.
Northern Natural Gas Company.	82–11–NG.
Distrigas Corporation	82–13–NG.
Pacific Gas Transmission Company.	82–16–NG.
Tennessee Gas Pipeline Company.	82–18–NG.
Northwest Pipeline Corporation	83–06–NG.
Great Lakes Gas Transmission Company.	83–07–NG.

Appendix B—Existing Authorizations*

Company name	*ERA Docket No.*
Border Gas, Inc	79–31–NG.
Boundary Gas, Inc	81–04–NG.
Distrigas Corporation	77–011–LNG.
Gas Service, Inc	81–22–LNG.
Manchester Gas Company	
Great Lakes Gas Transmission Company.	81–10–NG.
Inter-City Minnesota Pipelines, Ltd.	82–15–NG.
Michigan Wisconsin Pipe Line Company.	81–18–NG.
Midwestern Gas Transmission Company.	81–16–NG.
Midwestern Gas Transmission Company.	83–08–NG.
Great Lakes Gas Tramsmission Company.	
Montana Power Company	81–21–NG.
Natural Gas Pipeline Company of America.	79–15–NG.
Michigan Wisconsin Pipe Line Company.	
Tennessee Gas Pipeline Company.	
Texas Eastern Gas Pipeline Company.	
Northern Natural Gas Company.	82–09–NG.
Northwest Pipeline Corporation	81–31–NG.
Pacific Gas Transmission Company.	81–09–NG.
St. Lawrence Gas Company, Inc.	81–13–NG.
Tennessee Gas Pipeline Company.	81–24–NG.
Transcontinental Gas Pipe Line Corp.	80–14–NG. 81–30–NG.
Vermont Gas Systems, Inc	83–09–NG.

*The docket number represents the most recent proceeding before the ERA involving the import.

Appendix C—Suspending Proceedings

Company name	*ERA Docket No.*
Transcontinental Gas Pipe Line Corp.	79–08–NG.
Tennessee Gas Pipeline Company.	
Northern Natural Gas Company.	79–24–NG.
Inter-City Minnesota Pipelines Ltd., Inc.	80–01–NG.
Great Lakes Gas Transmission Company.	80–02–NG.
Montana Power Company	80–03–NG.
Michigan Wisconsin Pipe Line Company.	80–04–NG.
Northwest Pipeline Corporation	80–05–NG.
Midwestern Gas Transmission Company.	80–06–NG.
Pacific Gas Transmission Company.	80–07–NG.
St. Lawrence Gas Company, Inc.	80–09–NG.
Vermont Gas Systems, Inc	80–10–NG.
Transcontinental Gas Pipe Line Corp.	80–14–NG.

[FR Doc. 84–4747 Filed 2–22–84; 8:45 am]

BILLING CODE 6450–01–M

federal register

Wednesday
February 22, 1984

Part VIII

Environmental Protection Agency

40 CFR Part 180
21 CFR Parts 193 and 561
Ethylene Dibromide; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[00000/P325; PH-FRL 2526-7]

Ethylene Dibromide; Proposed Revocation of Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule to revoke exemption from requirement of a tolerance.

SUMMARY: This notice proposes the revocation of 40 CFR 180.1006, which exempts organic bromide residues on a variety of grains resulting from the use of ethylene dibromide (EDB) as a post-harvest fumigant from the requirement of a tolerance. EPA is proposing this action because of the health and safety concerns posed by residues of EDB. The comment period on this action has been expedited pursuant to Article 2.6.1, related to notification of urgent problems of health, safety and environmental protection, under The Agreement on Technical Barriers to Trade (Standards Code).

DATE: Written comments must be received on or before March 23, 1984.

ADDRESSES:

By mail, submit written comments to: Program Management and Support Division (TS-757C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Johnson, 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. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7420).

SUPPLEMENTARY INFORMATION: On September 28, 1983, the Administrator issued a notice, published in the **Federal Register** of October 11, 1983 (48 FR 46234), of intent to cancel registrations of ethylene dibromide (EDB) for use as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain milling equipment, as well as the other major uses of EDB. This action was based on a determination that the carcinogenic, mutagenic, and adverse reproductive risks posed by the use of EDB outweighed the benefits associated with the use of the chemical as a pesticide. The detailed risk and benefit analysis which provides the basis for this regulatory action is contained in a Position Document 4 (PD 4), which is available from the Agency at the address given above. Requests for an adjudicatory hearing to challenge the proposed cancellation of the major uses of EDB have been filed by registrants and user groups.

On February 3 of this year (49 FR 4452, February 6, 1984), the Agency issued an emergency suspension for the use of EDB as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain milling equipment. This emergency suspension bans the sale, distribution, and use in the United States of EDB products registered for these grain uses during the pendency of the on-going cancellation hearing. The support document which provides detailed risk and benefit information in support of the Agency's emergency suspension action is available from the Agency at the address given above.

The organic bromide residues (including EDB) resulting from use of EDB as a fumigant after harvest are currently exempted from the requirement of a tolerance for the following grains: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat. This exemption was granted in 1956 based on available toxicology studies and the conclusion that the 5–10 ppm levels of inorganic bromide which resulted in the consumed food (ready-to-eat) did not have any toxicological significance. These residue levels were determined by the less sophisticated analytical methodology available at the time which was not capable of detecting EDB *per se*. Currently available analytical methods are now capable of detecting EDB *per se* down to a limit of detection of 1 part per billion (ppb).

EPA is proposing to revoke the exemption from the requirement of a tolerance in 40 CFR 180.1006 for organic bromide residues (including EDB) on the grains enumerated above resulting from use of EDB as a fumigant after harvest. The totality of the risk information available to the Agency and the availability of analytical methods capable of detecting EDB residues *per se* dictate that the Agency propose to revoke the exemption from this requirement of a tolerance for organic bromide residues resulting from EDB use on grain. Revocation of this exemption is necessary to assure that unlimited residues of EDB cannot be legally present in grain and grain products.

Elsewhere in this issue of the **Federal Register**, the Agency is proposing (1) the establishment of a tolerance of 900 ppb for EDB *per se* on the following grains which were fumigated after harvest with EDB: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat; (2) the revocation of the tolerance of 50 ppm in 40 CFR 180.146 for residues of inorganic bromide (calculated as Br) in or on the grains enumerated above; (3) the revocation of the food additive regulation in 21 CFR 193.250(b), for residues of inorganic bromides (calculated as Br) as a result of the use of a mixture of methyl bromide and ethylene dibromide as a fumigant in or on certain processed foods; and (4) the revocation of the food additive regulation in 21 CFR 561.260(b) for residues of inorganic bromides (calculated as Br) of 125 ppm in or on milled fractions for animal feed from barley, corn, grain sorghum (milo), oats, rice, rye, and wheat, resulting from carryover and concentration of residues of inorganic bromides from fumigation of the grains with EDB.

The Agency has calculated the potential oncogenicity risk resulting from the dietary consumption of treated grain products based on an analysis of all available residue data, much of which was collected over the past several months, and food consumption estimates from a nationwide survey conducted by the United States Department of Agriculture in 1977–78. These calculations were performed using the models described in detail in the Agency's EDB Position Documents 2/3 and 4, and the results of a long-term National Cancer Institute bioassay study of Osborne Mendel rats. The Agency's estimates of the potential oncogenic risk associated with the consumption of EDB residues in grain products are set forth in detail in the Support Document for the emergency suspension action, available from the Agency at the address given above.

Based on the considerations set forth above, the Agency is hereby proposing revocation of the exemption from a requirement of a tolerance in 40 CFR 180.1006 for residues of EDB resulting from use as a fumigant after harvest on the following grains: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat. As noted above, concurrent with this proposal EPA is proposing elsewhere in this issue of the **Federal Register** the establishment of a 900 ppb tolerance for residues of EDB *per se* on a variety of grains.

The data and information available to the Agency indicates that the vast majority of milled products processed from raw grain containing 900 ppb or less of EDB should, following good

manufacturing practice, contain less than 150 ppb EDB. Likewise, the cooking process is expected to reduce the EDB level in the milled product to less than 30 ppb in the finished (ready-to-eat) consumer product, assuming good manufacturing practice is followed.

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains EDB may request within 30 days after publication of this notice in the **Federal Register** that this proposal to revoke the exemption from the requirement of a tolerance for EDB be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. Requests must bear the notation indicating the document control number [00000/P325], and must be submitted to the mailing address provided above.

Interested persons are invited to submit written comments on this proposal to revoke the exemption from the requirement of a tolerance for EDB in 40 CFR 180.1006. Comments must bear the notation indicating the document control number [00000/P325]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this Notice will be available for public inspection in the Program Management and Support Division at the above address between 8:00 am to 4:00 pm, Monday through Friday, except legal holidays.

This document has been sent to the Office of Management and Budget for review as required by Section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291, the Regulatory Flexibility Act and the Paperwork Reduction Act, the Agency has analyzed the costs and benefits of the revocation of the exemptions from tolerances for EDB. Documents containing these analyses are available at the address identified elsewhere in this notice.

Executive Order 12291

This proposal would revoke the exemption from a requirement of a tolerance for residues resulting from EDB use as a post-harvest fumigant on grains and products made from grains. The economic and health impacts of this proposal have been analyzed vis-a-vis several optional values at which tolerance levels could be established. At the level being proposed, the incidence of adverse economic impacts have been judged likely to be isolated and not involve significant portions of the grain markets, grain milling, or bakery products industries. The true economic impacts would depend on the distribution of EDB residues in grain and grain-based products. The Agency does not have definitive, statistically valid estimates of this distribution. However, the various studies received by the Agency suggest that, at the tolerance level proposed, there would not be widespread product seizures.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1165, 5 U.S.C. 60 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. This conclusion is based on the Agency's cost/benefit analyses cited above.

The revocation of exemptions from tolerances would potentially affect firms in the grain milling and bakery products industries as well as grain farmers. Products found to contain EDB residues in excess of a tolerance level may be subject to enforcement action. However, it is anticipated that many farms and grain milling operations will employ a variety of practices such as aeration, heating and holding of the grain in order to reduce EDB residues below the tolerance level. The sampling of products is not intended to focus specifically on small firms, hence small firms would face no greater probability than the industry as a whole of having their products sampled or otherwise subjected to federal enforcement efforts.

Any impacts on small businesses are expected to be isolated. To an individual firm, enforcement action could have serious financial consequences. Such actions, however, should not be widespread; furthermore, the overall residue levels are expected to decline in the future so that the possibilities of enforcement actions should decline with time.

Accordingly, I certify that this regulation does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (Sec. 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(m))).

List of Subjects in 40 CFR Part 180

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

Dated: February 17, 1984.

William D. Ruckelshaus,

Administrator.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended by removing § 180.1006 to read as follows:

§ 180.1006 [Removed]

[FR Doc. 84-4878 Filed 2-21-84; 11:23 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[00000/P329; PH-FRL 2531-3]

Ethylene Dibromide; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance of 900 ppb be established for residues of the insecticide ethylene dibromide (EDB) *per se* in or on the grains barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat as a result of post-harvest fumigation with EDB prior to the effective date of the Agency's emergency suspension order prohibiting EDB grain uses.

DATE: Written comments must be received on or before March 23, 1984.

ADDRESSES:

By mail, submit written comments to: Program Management and Support Division (TS–757C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20406.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Johnson, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20406.

Office location and telephone number: Rm. 711, CM ¢2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–7420).

SUPPLEMENTARY INFORMATION: On September 28, 1983, the Administrator issued a notice, published in the **Federal Register** of October 11, 1983 (48 FR 46234), of intent to cancel registrations of ethylene dibromide (EDB) for use as a

fumigant of grain stored in bulk and as a fumigant for spot treatment of grain milling equipment, as well as the other major uses of EDB. This action was based on a determination that the carcinogenic, mutagenic, and adverse reproductive risks posed by the use of EDB outweighed the benefits associated with the use of the chemical as a pesticide. The detailed risk and benefit analysis which provides the basis for this regulatory action is contained in a Position Document 4 (PD 4), which is available from the Agency at the address given above. Requests for an adjudicatory hearing to challenge the proposed cancellation of the major uses of EDB have been filed by registrants and user groups.

On February 3 of this year, the Administrator issued an emergency suspension for the use of EDB as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain milling equipment. (49 FR 4452, February 6, 1984.) This emergency suspension bans the sale, distribution, and use in the United States of EDB products registered for these grain uses during the pendency of the on-going cancellation hearing. The support document which provides detailed risk and benefit information in support of the Agency's emergency suspension action is available from the Agency at the address given above.

The totality of the risk information available to the Agency and the availability of analytical methods capable of detecting EDB residues *per se* dictate that the Agency propose to revoke the exemption from the requirement of a tolerance in 40 CFR 180.1006 for organic bromide residues resulting from EDB use on grain. Based on available data and information, the Agency has also determined that it is appropriate to replace this exemption with a tolerance level in barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat of 900 ppb to cover residues of EDB *per se* which resulted from treatment of the grain with EDB prior to the effective date of the suspension order (February 3, 1984).

Concurrent with this proposal, the Agency is recommending to FDA that action levels be set for various grain products once the final rule revoking the exemption from the requirement of a tolerance is published. These action levels are consistent with the maximum permissible residue levels recommended by the Administrator to the states on February 3. The procedures governing FDA's establishment of action levels are set forth in 21 CFR 109.4(b)(2). The specific action levels which the Agency is recommending to FDA are 150 ppb for milled products (e.g., flour) and 30 ppb for finished products (ready-to-eat consumer products).

Based on the data and information available to the Agency, the vast majority of milled products processed from raw grain containing 900 ppb or less of EDB should, following good manufacturing practice, contain less than 150 ppb EDB. Accordingly, enforcement efforts directed at raw grain will serve to drive down the actual residue levels in the milled and finished products. Likewise, the cooking process is expected to reduce the EDB level in the milled product to less than 30 ppb in the finished (ready-to-eat) consumer product, assuming good manufacturing practice is followed.

Following revocation of the exemption and establishment of a tolerance by EPA, the Food and Drug Administration (FDA) can take enforcement action on raw grain under the Federal Food, Drug, and Cosmetic Act (FFDCA) if the tolerance is exceeded. The FDA can also take action under the FFDCA against grain-based processed foods containing EDB residues, in accordance with the action levels to be set by FDA based on the EPA recommendations.

Elsewhere in this issue of the **Federal Register**, the Agency is proposing (1) the revocation of 40 CFR 180.1006, which exempts organic bromide residues on the following grains resulting from the use of EDB as a post-harvest fumigant: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat; (2) the revocation of the tolerance of 50 ppm in 40 CFR 180.146 for residues of inorganic bromide (calculated as Br) in or on the grains enumerated above; (3) the revocation of the food additive regulation in 21 CFR 193.250(b) for residues of inorganic bromides (calculated as Br) as a result of the use of a mixture of methyl bromide and ethylene dibromide as a fumigant in or on certain processed foods; and (4) the revocation of the food additive regulation in 21 CFR 561.260(b) for residues of inorganic bromides (calculated as Br) of 125 ppm in or on milled fractions for animal feed from barley, corn, grain sorghum (milo), oats, rice, rye, and wheat, resulting from carryover and concentration of residues of inorganic bromides from fumigation of the grains with EDB.

The Agency has calculated the potential oncogenicity risk resulting from the dietary consumption of treated grain products based on an analysis of all available residue data, much of which was collected over the past several months, and food consumption estimates from a nationwide survey conducted by the United States Department of Agriculture in 1977–78. These calculations were performed using the model described in detail in the Agency's EDB Position Document 4, and the results of a long-term National Cancer Institute bioassay study of Osborne Mendal rats. The Agency's estimates of the potential oncogenic risk associated with the consumption of EDB residues in grain products are set forth in detail in the Support Document for the emergency suspension action, available from the Agency at the address given above.

Based on the considerations set forth above, the Agency is hereby proposing the establishment of a tolerance level of 900 ppb on the grains: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat as a result of post-harvest fumigation with EDB prior to the effective date of the Agency's emergency suspension order prohibiting the grain uses of EDB (February 3, 1984).

The nature of the residues is adequately understood. An adequate analytical method, using a gas chromatograph equipped with an electron detector capable of measuring residue levels of EDB *per se*, is available for enforcement purposes. This analytical method is available to interested persons at the address provided above, and from the Bureau of Foods, Food and Drug Administration. As discussed above, the Agency has issued an emergency suspension notice to prohibit the sale, distribution, and use of EDB products registered for the grain uses during the pendency of the on-going cancellation proceedings. Based on the above information considered by the Agency, the tolerance established by amending 40 CFR Part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. Requests must bear the notation indicating the document control number [00000/P329] and must be submitted to the mailing address provided above.

Interested persons are invited to submit written comments on the proposed regulation. Comments must

bear a notation indicating the document control number, [00000/P329]. All written comments filed in response to this proposal will be available in the Program and Management Support Division at the address given above from 8:00 am to 4:00 pm, Monday through Friday, except legal holidays.

This document has been sent to the Office of Management and Budget for review as required by Section 3 of the Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: February 17, 1984.

William D. Ruckelshaus,

Administrator.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.397 be amended by designating the current paragraph as paragraph (a) and adding a new paragraph (b) as follows:

180.397 [Amended]

* * * * *

(B) A tolerance of 900 ppb for residues of ethylene dibromide *per se* is established on the following grains as a result of the use of EDB as a post-harvest fumigant prior to February 3, 1984: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat.

[FR Doc. 84–4879 Filed 2–21–84; 11:23 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[00000/P324; PH–FRL 2527–2]

Ethylene Dibromide; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revocation of tolerance.

SUMMARY: This notice proposes the revocation of the first paragraph of 40 CFR 180.146, which lists tolerances of 50 ppm for residues of inorganic bromides (calculated as Br) in or on certain grains which were fumigated after harvest with ethylene dibromide (EDB). EPA is proposing this action because of the health and safety concerns posed by residues of EDB. The comment period on this action has been expedited pursuant to Article 2.6.1, related to notification of urgent problems of health, safety and environmental protection, under The Agreement on Technical Barriers to Trade (Standards Code).

DATE: Written comments must be received on or before March 23, 1984.

ADDRESSES:

By mail, submit written comments to: Program Management and Support Division (TS–757C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Johnson, Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703 557–7420).

SUPPLEMENTARY INFORMATION: On September 28, 1983, the Administrator issued a notice, published in the **Federal Register** of October 11, 1983 (48 FR 46234), of intent to cancel registrations of ethylene dibromide (EDB) for use as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain milling equipment, as well as the other major uses of EDB. This action was based on a determination that the carcinogenic, mutagenic, and adverse reproductive risks posed by the use of EDB outweighed the benefits associated with the use of the chemical as a pesticide. The detailed risk and benefit analysis which provides the basis for this regulatory action is contained in a Position Document 4 (PD 4), which is available from the Agency at the address given above. Requests for an adjudicatory hearing to challenge the proposed cancellation of the major uses of EDB have been filed by registrants and user groups.

On February 3 of this year, the Administrator issued an emergency suspension for the use of EDB as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain milling equipment (49 FR 4452, February 6, 1984). This emergency suspension bans the sale, distribution, and use of EDB products registered for these grain uses during the pendency of the ongoing cancellation hearing. The support document which provides detailed risk and benefit information in support of the Agency's emergency suspension action is available from the Agency at the address given above.

Tolerances of 50 parts per million (ppm) are currently established in 40 CFR 180.146 for residues of inorganic bromides (calculated as Br) in or on the following grains that have been fumigated after harvest with EDB: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat. The organic bromide residues (including EDB) resulting from use of EDB as a post-harvest fumigant are currently exempted in 40 CFR 180.1006 from the requirement of a tolerance for the following grains: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat.

The totality of the risk information available to the Agency and the availability of analytical methods capable of detecting EDB residues *per se* dictate that the Agency propose to revoke the tolerances of 50 ppm for residues of inorganic bromide (calculated as Br) in or on grains which were fumigated after harvest with EDB. Revocation of these tolerances is necessary to assure consistency with the revocation of the exemption for EDB residues and with the establishment of a tolerance for organic EDB residues.

The Agency is also proposing in this issue of the **Federal Register** to (1) revoke the exemption from the requirement of a tolerance in 40 CFR 180.1006 for organic bromide residues (including EDB) in or on the grains barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat resulting from the use of EDB as a post-harvest fumigant; (2) set a tolerance level of 900 ppb for residues of EDB *per se* in or on these grains, resulting from post-harvest fumigation with EDB prior to the effective date of the Agency's emergency suspension order; (3) revoke the food additive regulation in 21 CFR 193.250(b) for residues of inorganic bromides (calculated as Br) as a result of the use of a mixture of methyl bromide and ethylene dibromide as a fumigant in or on certain processed foods; and (4) revoke the food additive regulation in 21 CFR 561.260(b) for residues of inorganic bromides (calculated as Br) of 125 ppm in or on milled fractions for animal feed from certain grains resulting from carryover and concentration of residues of inorganic bromides from fumigation of the grains with EDB.

The Agency has calculated the potential oncogenicity risk resulting from the dietary consumption of treated grain products at various level of EDB, based on an analysis of all available residue data, much of which was collected over the past several months, and food consumption estimates from a nationwide survey conducted by the United States Department of Agriculture in 1977–78. These calculations were performed using the model described in detail in the Agency's Position Document 4, and the results of a long-term National Cancer Institute bioassay study of Osborne Mendel rats. The Agency's estimates of the potential oncogenic risk associated with the consumption of EDB residues in grain products are set forth in detail in Support Document for the emergency suspension action, available from the Agency at the address given above.

Based on the considerations set forth above, the Agency is hereby proposing to revoke the 50 ppm tolerances in 40 CFR 180.146 for residues of inorganic bromides (calculated as Br) in or on the following grains that have been fumigated after harvest with EDB: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat. As noted above, the Agency is also in this issue of the **Federal Register** proposing to establish a tolerance of 900 ppb for residues of EDB *per se* on the grains enumerated above. A discussion of the rationale for this tolerance level is contained in that document.

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains EDB may request within 30 days after publication of this notice in the **Federal Register** that this proposal to revoke the 50 ppm tolerance in 40 CFR 180.146 for residues of inorganic bromides be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. Requests must bear the notation indicating the document control number [00000/P324] and must be submitted to the mailing address provided above.

Interested persons are invited to submit written comments on this proposal to revoke the 50 ppm tolerances in 40 CFR 180.146 for residues of inorganic bromides (calculated as Br) in or on the following grains that have been fumigated after harvest with ethylene dibromide: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat. Comments must bear the notation indicating the document control number [00000/P324]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this Notice will be available for public inspection in the Program Management and Support Division at the above address between 8:00 am and 4:00 pm, Monday through Friday, except legal holidays.

This document has been sent to the Office of Management and Budget for review as required by Section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291, the Regulatory Flexibility Act and the Paperwork Reduction Act, the Agency has analyzed the costs and benefits of the revocation of the exemption from the requirement of a tolerance for EDB. Documents containing these analyses are available at the address identified elsewhere in this notice.

Executive Order 12291

This notice proposes to revoke the tolerances for residues of inorganic bromides (calculated as Br) in or on certain grains which were fumigated after harvest with EDB. The economic and health impacts of this proposal have been analyzed vis-a-vis several optional values at which tolerance levels could be established. At the tolerance level being proposed, the incidence of adverse economic impacts has been judged likely to be isolated and not involve significant portions of the grain markets, grain milling, or bakery products industries. The true economic impacts would depend on the distribution of EDB residues in grain and grain-based products. The Agency does not have definitive, statistically valid estimates of this distribution. However, the various studies received by the Agency suggest that, at the tolerance level proposed, there would not be widespread product seizures.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1165, 5 U.S.C. 60 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. This conclusion is based on the Agency's cost/benefit analyses cited above.

The revocation of these tolerances would potentially affect firms in the grain milling and bakery products industries as well as grain farmers. Products found to contain EDB residues in excess of tolerance levels may be subject to enforcement action. However, it is anticipated that many farms and grain milling operations will employ a variety of practices such as aeration, heating, and holding of the grain in order to reduce EDB residues below the tolerance level. The sampling of products is not intended to focus specifically on small firms, hence small firms would face no greater probability than the industry as a whole of having their products sampled or otherwise subjected to federal enforcement efforts.

Any impacts on small businesses are expected to be isolated. To an individual firm, enforcement action could have serious financial consequences. Such actions, however, should not be widespread; furthermore, the overall residue levels are expected to decline in the future so that the possibilities of enforcement actions should decline with time.

Accordingly, I certify that this regulation does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

(Sec. 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(m)))

List of Subjects in 40 CFR Part 180

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

Dated: February 17, 1984.

William D. Ruckelshaus,

Administrator.

PART 180—[AMENDED]

§ 180.146 [Amended]

Therefore, it is proposed that 40 CFR 180.146 be amended by removing the first paragraph of the section.

[FR Doc. 84-4877 Filed 2-21-84; 11:23 am]

BILLING CODE 6560-50-M

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21 CFR Part 193

[00000/P326; PH-FRL 2526-8]

Ethylene Dibromide; Proposed Revocation of Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revocation of food additive regulation.

SUMMARY: This document proposes the revocation of 21 CFR 193.250(b) which lists a food additive regulation for residues of inorganic bromides (calculated as Br) as a result of the use of a mixture of methyl bromide and ethylene dibromide (EDB) as a fumigant in or on certain processed foods. EPA is proposing this action because of the health and safety concerns posed by residues of EDB. The comment period on this action has been expedited pursuant to Article 2.6.1, related to notification of urgent problems of health, safety and environmental protection, under The Agreement on Technical Barriers to Trade (Standards Code).

DATE: Written comments must be received on or before March 23, 1984.

ADDRESSES:

By mail, submit written comments to: Program Management and Support Division (TS–757C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Johnson, Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–7420.

SUPPLEMENTARY INFORMATION: On September 28, 1983, the Administrator issued a notice, published in the **Federal Register** of October 11, 1983 (48 FR 46234), of intent to cancel registrations of ethylene dibromide (EDB) for use as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain milling equipment, as well as other major uses of EDB. This action was based on a determination that the carcinogenic, mutagenic, and adverse reproductive risks posed by the use of EDB outweighed the benefits associated with the use of the chemical as a pesticide. The detailed risk and benefit analysis which provides the basis for this regulatory action is contained in a Position Document 4 (PD 4), which is available from the Agency at the address given above. Requests for an adjudicatory hearing to challenge the proposed cancellation of the major uses of EDB have been filed by registrants and user groups.

On February 3 of this year the Administrator issued an emergency suspension for the use of EDB as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain milling equipment. (49 FR 4452, February 6, 1984). This emergency suspension bans the sale, distribution, and use of EDB products registered for these grain uses during the pendency of the on-going cancellation hearing. The support document which provides detailed risk and benefit information in support of the Agency's emergency suspension action is available from the Agency at the address given above.

Section 193.250(b) of 21 CFR currently provides that the residues of inorganic bromides (calculated as Br) shall not exceed the following levels when the food additive is present as the result of the use of a mixture of methyl bromide and ethylene dibromide as a fumigant:

400 ppm in or on dried eggs and processed herbs and spices

125 ppm in or on bread, biscuit, cake, cookie, and pie mixes; breading; cereal flours and related products complying with Part 15 of this chapter; cracked rice; dried vegetables; flours of barley, milo (sorghum), oats, rice, and rye; macaroni and noodle products complying with Part 16 of this chapter; and soya flour

Section 193.250(a) of 21 CFR provides that the food additive inorganic bromide may be present in certain processed food as a result of fumigation of the processed food with methyl bromide or from such fumigation in addition to the authorized use of methyl bromide, ethylene dibromide or the nematocide 1,2-dibromo-3-chloropropane on the source raw agricultural commodity.

The totality of the risk information available to the Agency and the availability of analytical methods capable of detecting EDB residues *per se* dictate that the Agency propose to revoke the food additive regulation in 21 CFR 193.250(b) for residues of inorganic bromides (calculated as Br) as a result of the use of a mixture of methyl bromide and ethylene dibromide as a fumigant in or on the processed foods enumerated above.

Elsewhere in this issue of the **Federal Register**, the Agency is proposing to (1) revoke the exemption from the requirement of a tolerance in 40 CFR 180.1006 for organic bromide residues (including EDB) resulting from use of EDB as a post- harvest fumigant for a variety of grains; (2) establish a tolerance level of 900 ppb for residues of EDB *per se* in or on these grains as a result of the post-harvest fumigation use of EDB prior to the effective date of the emergency suspension order; (3) revoke the first paragraph of 40 CFR 180.146 which lists tolerances of 50 ppm for residues of inorganic bromides in or on certain grains which were fumigated after harvest with EDB; and (4) revoke the food additive regulation in 21 CFR 561.260(b) for residues of inorganic bromides (calculated as Br) of 125 ppm in or on milled fractions for animal feed from various grains resulting from carryover and concentration of residues of inorganic bromides from fumigation of the grains with EDB.

The Agency has calculated the potential oncogenicity risk resulting from the dietary consumption of treated grain products at various levels of EDB, based on an analysis of all available residue data, much of which was collected over the past few months, and food consumption estimates from a nationwide survey conducted by the United States Department of Agriculture in 1977–78. These calculations were performed using the model described in detail in the Agency's Position Document 4, and the results of a long-term National Cancer Institute bisoassay study of Osborne Mendel rats. The Agency's estimates of the potential oncogenic risk associated with the consumption of EDB residues in processed grain products are set forth in detail in the Support Document for the emergency suspension action, available from the Agency at the address given above.

Based on the considerations set forth above, the Agency is hereby proposing to revoke the following food additive regulation listed in 21 CFR 193.250(b) for residues of inorganic bromides (calculated as Br) as a result of the use of a mixture of methyl bromide and ethylene dibromide as a fumigant:

400 ppm in or on dried eggs and processed herbs and spices

125 ppm in or on bread, biscuit, cake, cookie, and pie mixes; breading; cereal flours and related products complying with Part 15 of this chapter; cracked rice; dried vegetables; flours of barley, milo (sorghum), oats, rice, and rye; macaroni and noodle products complying with Part 16 of this chapter; and soya flour

The Agency is also proposing that the words "ethylene dibromide" be removed from 21 CFR 193.250(a).

Interested persons are invited to submit written comments on this proposal to revoke the food additive regulations set forth in 21 CFR 193.250 for residues of inorganic bromides (calculated as Br) as a result of the use of a mixture of methyl bromide and ethylene dibromide as a fumigant in or on the processed food enumerated above. Comments must bear the notation indicating the document control number [00000/P326]. Three copies of the comments should be submitted to facilitate the work of the Agency and of

others interested in reviewing the comments. All written comments filed pursuant to this Notice wil be available for public inspection in the Program and Management Support Division at the above address between 8:00 am to 4:00 pm, Monday through Friday, except legal holidays.

This document has been sent to the Office of Management and Budget for review as required by Section 3 of Executive Order 12291.

This proposed action has been analyzed under the Regulatory Flexibility Act, ad the requirements of Executive Order 12291. The analysis contained in the proposals for the revocation of the exemption from the requirement of a tolerance in 40 CFR 180.1006 for organic bromide residues in a variety of grains resulting from the post-harvest fumigation of EDB, and for the revocation of the inorganic bromide tolerances in 40 CFR 180.146 on a variety of grains resulting from the post-harvest fumigation of EDB applies equally to the proposed action set forth in this notice. Accordingly, I certify that this proposed regulation does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

(Sec. 409(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(h)))

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: February 17, 1984.

William D. Ruckelshaus,

Administrator.

PART 193—[AMENDED]

Therefore, it is proposed that 21 CFR Part 193 be amended as follows:

§ 193.250 [Amended]

By amending § 193.250 by deleting the reference to "ethylene dibromide" appearing in the introductory text of paragraph (a) and removing and reserving paragraph (b).

[FR Doc. 84-4876 Filed 2-21-84; 11:24 am]

BILLING CODE 6560-50-M

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21 CFR Part 561

[00000/P327; PH-FRL 2527-1]

Ethylene Dibromide; Proposed Revocation of Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revocation of food additive regulation.

SUMMARY: This document proposes the revocation of the provision in 21 CFR 561.260(b) which lists a food additive regulation for residues of inorganic bromides (calculated as Br) of 125 ppm in or on milled fractions for animal feed from barley, corn, grain sorghum (milo), oats, rice, rye, and wheat, resulting from carryover and concentration of residues of inorganic bromides from fumigation of the grains with ethylene dibromide (EDB). EPA is proposing this action because of the health and safety concerns posed by residues of EDB. The comment period on this action has been expedited pursuant to Article 2.6.1, related to notification of urgent problems of health, safety and environmental protection, under The Agreement on Technical Barriers to Trade (Standards Code).

DATE: Written comments must be received on or before March 23, 1984.

ADDRESSES:

By mail, submit written comments to: Program Management and Support Division (TS–757C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Johnson, Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703 557–7420).

SUPPLEMENTARY INFORMATION: On September 28, 1983, the Administrator issued a notice, published in the Federal Register of October 11, 1983 (48 FR 46234), of intent to cancel registrations of ethylene dibromide (EDB) for use as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain milling equipment, as well as other major uses of EDB. This action was based on a determination that the carcinogenic, mutagenic, and adverse reproductive risks posed by the use of EDB outweighed the benefits associated with the use of the chemical as a pesticide. The detailed risk and benefit analysis which provides the basis for this regulatory action is contained in a Position Document 4 (PD 4), which is available from the Agency at the address given above. Requests for an adjudicatory hearing to challenge the proposed cancellation of the major uses of EDB have been filed by registrants and user groups.

On February 3 of this year, the Administrator issued an emergency suspension for the use of EDB as a fumigant of grain stored in bulk and as a fumigant for spot treatment of grain milling equipment (49 FR 4452, February 6, 1984). This emergency suspension bans the sale, distribution, and use of EDB products registered for these grain uses during the pendency of the on-going cancellation hearing. The support document which provides detailed risk and benefit information in support of the Agency's emergency suspension action is available from the Agency at the address given above.

Section 561.260(b) of 21 CFR currently provides that tolerances are established for residues of inorganic bromides (calculated as Br) as follows:

> 125 ppm for residues in or on milled fractions for animal feed from barley, corn, grain sorghum (milo), oats, rice, rye, and wheat, resulting directly from fumigation with methyl bromide or from carryover with concentration of residues of inorganic bromides from fumigation of the grains with methyl bromide or ethylene dibromide.

The totality of the risk information available to the Agency and the availability of analytical methods capable of detecting EDB residues *per se* dictate that the Agency propose to revoke the food additive regulation in 21 CFR 561.260(b) for residues of inorganic bromides (calculated as Br) in or on milled fractions for animals fed from barley, corn, grain sorghum (milo), oats, rice, rye, and wheat, resulting from carryover and concentration of residues of inorganic bromides from fumigation of the grains with EDB.

Elsewhere in this issue of the Federal Register, the agency is proposing to (1) revoke the exemption from the requirement of a tolerance in 40 CFR 180.1006 for organic bromide residues (including EDB) resulting from use of EDB as a post-harvest fumigant for a variety of grains; (2) establish a tolerance level of 900 ppb for residues of EDB *per se* in or on these grains as a result of the post-harvest fumigation use of EDB prior to the effective date of the emergency suspension order; (3) revoke the first paragraph of 49 CFR 180.146, which lists tolerances of 50 ppm for residues of inorganic bromides (calculated as Br) in or on certain grains which were fumigated after harvest with EDB; and (4) revoke the food additive regulation in 21 CFR 193.250(b) for residues of inorganic bromides (calculated as Br) in or on certain processed foods as a result of the use of a mixture of methyl bromide and ethylene dibromide as a fumigant.

Based on the considerations set forth above, the Agency is hereby proposing

the revocation of the food additive regulation in 21 CFR 561.260(b) of 125 ppm for residues of inorganic bromides (calculated as Br) in or on milled fractions for animal feed from barley, corn, grain sorghum (milo), oats, rice, rye, and wheat, resulting from carryover and concentration of residues of inorganic bromides from fumigation of the grains with EDB. This proposal is consistent with the Agency's proposal, published in this edition of the **Federal Register**, to revoke the inorganic bromide tolerances in 40 CFR 180.146 on various grains resulting from fumigation after harvest with EDB, and to set a tolerance level of 900 ppb for residues of EDB *per se* on such grains. The support document for the emergency suspension action, available from the Agency at the address given above, contains a discussion of the method used by the Agency to calculate potential oncogenic risk to humans from the dietary consumption of products containing EDB residues, and a summary of these risk estimates.

Interested persons are invited to submit written comments on this proposal to revoke the food additive regulations set forth in 21 CFR 561.260(b) for residues of 125 ppm of inorganic bromides (calculated as Br) in or on milled fractions for animal feed from barley, corn, grain sorghum (milo), oats, rice, rye, and wheat, resulting from carryover and concentration of residues of inorganic bromides from fumigation of the grains with EDB. Comments must bear the notation indicating the document control number [00000/P327]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this Notice will be available for public inspection in the Program and Management Support Division at the above address between 8:00 am to 4:00 pm, Monday through Friday, except legal holidays.

This document has been sent to the Office of Management and Budget for review as required by section 3 of Executive Order 12291.

This proposed action has been analyzed under the Regulatory Flexibility Act, and the requirements of Executive Order 12291. The analysis contained in the proposals for the revocation of the exemption from the requirement of a tolerance in 40 CFR 180.1006 for organic bromide residues in a variety of grains resulting from the post-harvest fumigation of EDB, and for the revocation of the inorganic bromide tolerances in 40 CFR 180.146 on a variety of grains resulting from the post-harvest fumigation of EDB applies equally to the proposed action set forth in this notice. Accordingly, I certify that this proposed regulation does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

(Sec. 409(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(h)))

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: February 17, 1984.

William D. Ruckelshaus,

Administrator.

PART 561—[AMENDED]

Therefore, it is proposed that 21 CFR 561.260 be amended by revising paragraph (b) by deleting all references to ethylene dibromide so as to read as follows:

§ 561.260 Inorganic bromides.

* * * * *

(b) 125 parts per million for residues in or on milled fractions for animal feed from barley, corn, grain sorghum (milo), oats, rice, rye, and wheat, resulting directly from fumigation with methyl bromide or from carryover and concentration of residues of inorganic bromides from fumigation of the grains with methyl bromide.

* * * * *

[FR Doc. 84-4875 Filed 2-21-84; 8:45 am]

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Federal Register

Vol. 49, No. 36

Wednesday, February 22, 1984

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