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62882 **Food Assistance Programs—Surplus Cheese** USDA/FNS announces distribution of surplus process cheese to State agencies.

62808 **Food Stamps** USDA/FNS tightens criteria for authorizing wholesalers to accept and redeem food stamps.

62956 **Grant Programs—Public Health** HHS/HSA announces factors to be used in determining availability of FY 1982 project funds.

62868 **Loan Programs—Veterans' Housing** VA proposes to adopt geographical limitations for specially adapted housing benefits for seriously disabled veterans.

62894 **Grant Programs—Education** ED announces closing date for applications under the FY 1982 State Student Incentive Grant Program.

63026 **Grant Programs—Agriculture** USDA/SEA solicits applications for FY 1982 Alcohol Fuels and Special Research Grants Programs. (Part III of this issue)

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Highlights

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There are no restrictions on the republication of material appearing in the **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 month.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States, at its Twenty-third Plenary Session, adopted two recommendations. The first concerns fee structures under the Freedom of Information Act; the second concerns current versions of the so-called Bumpers Amendment. Recommendations of the Administrative Conference are published in full text in the Federal Register upon adoption. Complete lists of Recommendations, together with the texts of those Recommendations deemed to be of continuing general interest, are published in the Code of Federal Regulations (1 CFR 304.2(a)).

DATES: These recommendations were adopted December 10–11, 1981 and issued December 23, 1981.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, General Counsel (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

The Administrative Conference of the United States at its Twenty-third Plenary Session, held December 10–11, 1981, adopted two recommendations.

Recommendation 81–1 addresses the standards and procedures for collecting fees charged for complying with requests for records under the Freedom of Information Act. The Recommendation urges that the Act be amended to permit agencies to collect fees which reflect the costs of routine review records to determine whether an exemption should be asserted. The Recommendation also calls for the Department of Justice to establish guidelines to be followed by the agencies in assessing and collecting fees. The Recommendation does not call for change in the present statutory provision for waiver or reduction of fees, nor does it have any application to information requests under the Privacy Act, 5 U.S.C. 552a.

Recommendation 81–2: Current Versions of the Bumpers Amendment is intended to up-date the Conference's previous statement on the Bumpers Amendment, Recommendation 79–6, 1 CFR 305.79–6, to take account of subsequent revisions in the language of the proposal. Recommendation 81–2 reiterates the Conference's opposition to any across-the-board legislation altering the weight reviewing courts afford to agency statutory interpretations or expertise, but it does endorse a proposed amendment to 5 U.S.C. 706 respecting the standard of judicial review of agency rules.

The Assembly of the Conference voted to recommit for further consideration a proposed recommendation regarding Exemption (b)(4) of the Freedom of Information Act and it declined to adopt a proposed recommendation regarding separation of functions and staff communications with decisionmakers in agency proceedings.

The transcript of the discussion of these recommendations is available for public inspection at the Conference's office, Suite 500, 2120 L Street, N.W., Washington, D.C.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The table of contents to Part 305 of Title 1, CFR is amended to add the following new sections:

* * * * *

Sec.
305.81–1 Procedures for assessing and collecting Freedom of Information Act fees (Recommendation No. 81–1).
305.81–2 Current Versions of the Bumpers Amendment (Recommendation No. 81–2).

* * * * *

2. Section 305.81–1 is added to Part 305 as follows:

§ 305.81–1 Procedures for Assessing and Collecting Freedom of Information Act fees (Recommendation No. 81–1).

A decade has passed since the Administrative Conference of the United States last evaluated implementation of the Freedom of Information Act, 5 U.S.C. 552.[1] The goals of the Act have been widely accepted within the government and society, but the passage of time has revealed some discrete problems regarding the operation of the Act.

This Recommendation was prompted by reports that implementation of the Freedom of Information Act is much more costly than originally expected and, more importantly, that many information requests are made in the context of private activity unrelated to the Act's goal of informing the public about the operation of government or matters of public interest. Therefore, the Recommendation calls for amending the Freedom of Information Act to permit agencies to charge persons requesting records fees which reflect the cost of reviewing records and deleting exempt information from records, in addition to the direct costs of search and duplication now recoverable under the Act. This recommendation would not affect the rights of individuals under the Privacy Act, 5 U.S.C. 552a.

This Recommendation also contains advice on appropriate procedures for assessing and collecting fees, and recommends that the Department of Justice be required to establish guidelines for agencies to follow when adopting fee schedules and rules for assessing and collecting fees. The Conference believes uniformity in agency practice should be encouraged whenever practical.

Recommendation

1. Congress should amend the Freedom of Information Act to:

(a) permit agencies to collect from persons requesting records fees that reflect the costs of routine review of records to determine whether an exemption should be asserted, and of deleting exempt information, in addition to the search and duplication costs now recoverable under the Act. However, fees charged for such requests should not include (1) the cost of agency review conducted on appeal of initial agency denials

[1] *See* ACUS Recommendation 71–2, Principles and Guidelines for Implementation of the Freedom of Information Act (adopted May 7, 1971).

of Freedom of Information Act requests, or (2) the cost of review associated with development of general policy on releasing the type of information or records covered by the request;

(b) permit units within agencies to establish separate fee schedules where those units maintain separate FOIA operations and their costs are readily separable from other units of the agency;

(c) require that the Department of Justice, after allowing the agencies and the public the opportunity to comment, promulgate government-wide guidelines for agency fee schedules and for the assessment, collection and waiver of fees under the Freedom of Information Act. The guidelines should be consistent with the other sections of this recommendation, and should promote uniformity in agency regulations whenever practical.

2. Congress should retain the provision in section 552(a)(4)(A) of the Freedom of Information Act, which provides that persons requesting records shall have fees waived or reduced where the agency determines that furnishing the information will primarily benefit the general public.

3. Congress should not amend the Freedom of Information Act to permit agencies to recover in fees the overhead costs occasioned by the Act.

4. Congress should consider collecting accurate and uniform data on the cost of the Freedom of Information Act, since existing data is unreliable.

5. Department of Justice guidelines or, in their absence, agency rules should provide that:

(a) agencies waive Freedom of Information Act fees whenever the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. The level of this waiver provision should be established by agency rule, and should be expressed in terms such as hours of staff time and pages furnished, rather than a fixed dollar amount;

(b) persons will ordinarily not be charged for the cost of search if no records are produced by the agency. However, with respect to a request not entitled to a fee waiver, an agency should be permitted to assess search fees if the requester insists on further search after being informed by the agency, based on a reasonable preliminary search, that the search is unlikely to be productive;

(c) agencies may by rule provide that the submission of a Freedom of Information Act request constitutes an agreement by the requester to pay an amount of fees specified in the rule, unless the requester is entitled to a fee waiver or specifies a different amount in the request;

(d) agencies should be required to notify requesters if fees are expected to exceed an amount fixed by rule or otherwise agreed to by the requester. If a requester does not agree to pay additional fees, the agency may suspend the search and processing of records;

(e) agencies may require advance payment of fees if a requester has failed to honor a previous commitment to pay fees that were owed an agency, or if the agency reasonably determines that the requester is likely to be unwilling or unable to pay the probable fees;

(f) agencies will provide an administrative appeal mechanism through which requesters may challenge fee and fee waiver decisions. Agency decisions on fee appeals should be maintained in a separate public file for use by requesters and agency employees.

3. Section 305.81–2 is added to Part 305 as follows:

§ 305.81–2 Current Versions of the Bumpers Amendment (Recommendation No. 81–2).

In Recommendation 79–6, adopted in December 1979, the Conference criticized the then current version of the so-called Bumpers Amendment to Section 706 of the Administrative Procedure Act. At that time, the Conference, expressing its belief that concern about the broad substantive reach of the rules of a host of agencies cannot be effectively addressed by legislation prescribing new across-the-board standards for review, made the following two recommendations:

1. Congress should not enact the so-called Bumpers Amendment * * * or, by any similar legislation, at this time alter or reverse any presumption of validity that attaches to agency rules or regulations; and

2. An across-the-board judgment that judicial deference to agency expertise or to an agency's interpretation of its statutory mandate is never warranted would be unwise, and Congress should not enact legislation precluding such deference.

The Conference continues to believe that Congress should not, through across-the-board legislative measures, alter the weight reviewing courts afford agency statutory interpretations or expertise, and it therefore maintains the position taken in Recommendation 79–6. Since that recommendation was made, however, the Bumpers Amendment has been substantially revised. Accordingly, we believe it appropriate to address the current text of the amendment, as embodied in three pending versions: section 5(b) of S. 1080, as reported by the Senate Judiciary Committee; section 5 of S. 1080, as reported by the Senate Governmental Affairs Committee; and section 203 of H.R. 746, as reported by the House Judiciary Committee. The Senate Judiciary Committee version of S. 1080, which includes the most new material of the three proposals, would divide section 706 into three subsections and make three changes in the present text of section 706:

(1) It would insert into what is now the opening sentence of the undivided section, which would become the opening sentence of subsection (a), the word "independently." It would thereby make the section provide that the reviewing court shall "independently" decide all relevant questions of law, interpret constitutional and statutory provisions and determine the meaning or applicability of the terms of an agency action.

(2) It would add to section 706(a)(2) a new clause (F) reading as follows:

[The reviewing court shall * * * hold unlawful and set aside agency action, findings, and conclusions found to be * * *]

* * * * *

(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, as distinguished from the policy or legal basis, of a rule adopted in a proceeding subject to section 553 of this title * * *

Old clause (F) of the present section 706(2) would become clause (G) of section 706(a)(2).

(3) It would add a new subsection (c), to read as follows:

(c) In making determinations concerning statutory jurisdiction or authority under clause (2)(C) of subsection (a) of this section [the clause that says that the reviewing court is to hold unlawful and set aside agency action found to be "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"] the court shall require that action by the agency is within the scope of the agency jurisdiction or authority on the basis of the language of the statute or, in the event of ambiguity, other evidence of ascertainable legislative intent. In making determinations on other questions of law, the court shall not accord any presumption in favor of or against agency action.[1]

For the reasons discussed below, the Conference opposes adoption of the Bumpers Amendment in any of its current forms (with the exception of the provisions concerning substantial support in the rulemaking file, also discussed below). If Congress does enact legislation of this type, however, we recommend certain revisions of the Amendment's current provisions.

A. The extent to which a reviewing court should take into account an agency's interpretation of a statute is a subtle and complicated issue. The Conference agrees that the courts are the ultimate authority on questions of statutory interpretation that arise in the review of an agency action, and that the proper exercise of this authority calls for an independent examination of all relevant materials that would contribute to a correct resolution of such questions. The primary sources for the resolution of questions of statutory interpretation are the statutory text and other manifestations of Congress' intent in enacting the law. The Conference does not believe that in the resolution of such questions the legal position taken by the administering agency is

[1] The House Judiciary Committee version of the bill would add the word "independently" and the first sentence of new subsection (c), revised to read: "In making determinations under paragraph (2)(C) of subsection (a) of this section, the court shall require that action by the agency is within the scope of agency jurisdiction or authority on the basis of the language of the statute and, in the event of ambiguity, other evidence of ascertainable legislative intent." Instead of the new clause (F) that is quoted in the text of the recommendation, it would add to section 706 a new subsection (d), reading: "In determining whether an agency action in adopting a rule in a proceeding subject to section 553 of this title is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, the court shall consider whether there is substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis of the rule." The Senate Governmental Affairs Committee's version would not add "independently" or clause (F); it would add only the first sentence of subsection (c), as it reads in the Senate Judiciary Committee's version.

automatically entitled to special weight, but the Conference does believe that special weight may be justified by the circumstances surrounding the agency's adoption of or adherence to such position. These circumstances may include the fact that the agency interpretation was "a contemporaneous construction of the statute by [those] charged with the responsibility of setting its mechanism in motion," *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315 (1933); or that the agency interpretation has been asserted consistently, that it has received Congressional approval or acquiescence, that affected interests have relied on it, and that the interpretation is a direct outgrowth of the agency's experience in implementing the statute, *see Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971). The Conference does not favor legislation that would require courts to disregard such circumstances in reviewing the actions of agencies for conformity with the statutes they administer.

Many of the perceived problems with regulatory statutes and related agency practices are caused by statutory provisions and accompanying reports thereto which are imprecisely drafted or which fail to provide adequate guidance for application. Judicial review is, at best, an imperfect corrective for agency action that goes beyond an unarticulated mandate of the political processes. Further, by its very nature, it is insulated and removed from the legislative process, which is more directly responsive to the popular will on a given subject. Sounder policy judgments in the organic laws and other statutory grants of administrative power, more precise delegation, and systematic oversight and reevaluation of agency missions are far better ways to address these perceived problems than changing the standards of judicial review.

B. The current versions of the Bumpers Amendment contain ambiguous provisions that are susceptible of various interpretations. As a result, enactment of this legislation may produce undesirable consequences:

(i) To the extent that the insertion of the word "independently" in the first sentence of section 706(a) is intended simply to emphasize that the reviewing court is free to reject an agency interpretation or legal position with which it disagrees and to remind the court of its duty to undertake its own inquiry into the legal issues, we have no objection to the amendment, although we are not persuaded that such an admonition is needed. If the insertion of the word "independently" is intended to address the question of the weight that courts should accord to agency interpretations, we believe this question may be too subtle and difficult to be handled in such an elliptical manner.

(ii) We find the provisions of proposed section 706(c) confused and confusing in several respects, and believe that they should not be enacted.

a. The first sentence directs the courts to require that agency action is "within the scope of the agency jurisdiction or authority on the basis of the language of the statute or, in the event of ambiguity, other evidence of ascertainable legislative intent." The thrust of this direction is ambiguous. If it is intended to set forth a rule of construction that statutory grants of authority are to be construed narrowly, we believe such an indiscriminate rule would invite unintended results by failing to take into account particular statutory schemes. The preferable approach, in our view, is to permit the courts to interpret each statutory grant in the light of the terms and purpose of the statute and the specific intent of Congress. On the other hand, the sentence may be addressed solely to the question of what sources the courts may consult in determining the meaning of a statutory grant of authority. So interpreted, the sentence would further the professed goals of the proponents of the Bumpers Amendment by emphasizing reliance on statutory terminology and evidence of legislative intent in implied contradistinction to agency interpretation and practice, but some clarification of its intended effect is called for. The phrase "or, in the event of ambiguity, other evidence of ascertainable legislative intent" raises an additional problem, for it suggests that a court is to be directed to confine its consideration to the statutory language unless it first concludes that that language is ambiguous. The Conference believes the better rule is that stated by the Supreme Court in *Train* v. *Colorado PIRG*, 426 U.S. 1, 10 (1976): When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear the words may appear on superficial examination. *See also Watt* v. *Alaska*, 101 S. Ct. 1673, 1677–78 (1981); *Cabell* v. *Markham*, 148 F.2d 737, 739 (2d Cir. 1945).

b. The two sentences of subsection (c) strongly imply that the courts in making determinations concerning statutory jurisdiction or authority under section 706(a)(2)(C), are to apply a standard of review different from that to be applied in making determinations on "other questions of law." Yet it is by no means clear how the two categories are to be distinguished or how the two standards of review differ. For example, is the application of an assertedly erroneous legal standard to a fact situation within the agency's jurisdiction to be reviewed under the first sentence or under the second? *See, e.g., American Textile Mfrs. Institute, Inc.* v. *Donovan*, 101 S. Ct. 2478, 2489 (1981).

c. The meaning of the second sentence of subsection (c), directing that no presumption be accorded "in favor of or against agency action" as to "other questions of law," is unclear. The reference to presumptions as to questions of law is confusing, since presumptions, properly speaking, concern evidentiary matters, not legal questions. Moreover, if the sentence's purpose is to eliminate the weight courts now give to agency views on various legal questions, it would apparently reach issues such as the correctness of the agency's interpretation of its own regulation, *see Bowles* v. *Seminole Rock Co.*, 325 U.S. 410, 413–14 (1945), and the procedural regularity of agency action, *see Braniff Airways* v. *CAB*, 379 F. 2d 453, 460 (D.C. Cir. 1967). Thus interpreted, its scope is far too broad.

C. Both proposed new clause (F) of section 706(a)(2) and the alternative formulation, proposed new subsection (d) of section 706, promote the goals of Paragraph 3 of Conference Recommendation 74–4. We applaud these efforts to provide courts that review administrative regulations clearer guidance than is afforded by the present clause (2)(A) of section 706. We prefer proposed subsection (d) to proposed clause (F) because clause (F) can be read to create an independent ground for reversal of an agency rule. The better approach, in our view, is to direct the courts to consider whether the rule has substantial support in the rulemaking file as one factor in determining whether the agency's adoption of the rule was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Recommendations

1. Congress should not enact the so-called Bumpers Amendment in any of its current versions, or any similar across-the-board legislation altering the weight reviewing courts afford agency statutory interpretations or expertise.

2. If Congress nevertheless believes it necessary to enact legislation directed to the weight to be accorded administrative interpretations, it should substitute for the currently pending provisions the following clearer, more effective formulation:

(a) Amend section 706(a) of the Administrative Procedure Act by adding the word "independently"; and

(b) Either eliminate proposed section 706(c) altogether or adopt the following version of the section, similar but not identical to the current House Judiciary and Senate Government Affairs versions:

(c) In making determinations concerning statutory jurisdiction or authority under clause (2)(c) of subsection (a) of this section the court shall determine whether action by the agency is within the scope of the agency jurisdiction or authority on the basis of the terms of the statute and other evidence of legislative intent.

3. Congress should amend section 706 of the Administrative Procedure Act by adding a new subsection, to read as follows:

In determining whether an agency action in adopting a rule in a proceeding subject to section 553 of this title is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, the court shall consider whether there is substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis of the rule.

Dated: December 23, 1981.

Richard K. Berg,

General Counsel.

[FR Doc. 81-37066 Filed 12-28-81; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 278

[Amdt. No. 173]

Food Stamp Program; Authorizing Wholesalers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule further tightens the criteria for authorizing wholesalers to accept and redeem food stamps, based on the Food Stamp Act of 1977. It sets criteria that will allow a wholesaler to be authorized.

This action is necessary because the Food and Nutrition Service (FNS) has found that rules issued in 1978 to implement the Act did not give sufficiently specific criteria to ensure that FNS officials could uniformly carry out the agency's policy on authorizing wholesalers. Section 9(b) of the Food Stamp Act of 1977 states, in part, that *"No wholesale food concern may be authorized to accept and redeem coupons* unless the Secretary determines that its participation is required for the effective and efficient operation of the Food Stamp Program." (Emphasis added.) This wording contrasts sharply with the language of the Food Stamp Act of 1964, which treated retailers and wholesalers as equally necessary to the program. The new wording was meant to exclude from participation all wholesalers except those absolutely vital to program operations. The regulations which initially implemented this requirement stated that a wholesaler could be authorized if "the FNS Officer In Charge determines that the firm is needed as a redemption outlet for authorized retail food stores." Based on this language, a uniform policy on the authorization of wholesalers has been impossible to implement.

The intended effect of this action is to ensure that FNS officials can carry out policy uniformly. It will:

Remove from the program all wholesalers except those needed as food stamp redemption outlets by specific treatment programs for alcoholics and drug addicts, by specific group living arrangements for the blind or disabled, by specific shelters for battered women and children, by specific nonprofit cooperative food-purchasing ventures, or by specific retailers who have no access to a bank;

Require that FNS Officials specify exactly which authorized retailer(s) may redeem food stamps with a specific authorized wholesaler which will ensure that wholesalers who are authorized under one or more of these criteria do not gain a competitive advantage over other wholesalers who are not authorized; and

Ensure that all actions to remove wholesalers take place at the same time, so that no wholesaler gains a competitive advantage over other wholesalers.

EFFECTIVE DATE: This rule is effective January 28, 1982.

FOR FURTHER INFORMATION CONTACT: Duane Maddox, Federal Operations Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, VA 22302, 703–756–3457.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures contained in Secretary's Memorandum 1512–1 and under Executive Order 12291 and has been classified as not major. The rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Although wholesalers are currently redeeming over $600 million a year in food stamps, under the new rule, wholesalers will continue to do business with retailers, but will receive payment in cash or check, rather than in food stamps, so there will not be an adverse effect on wholesalers or on the economy in general. In fact, wholesalers will be relieved of a significant reporting burden in changing from receiving payment in food stamps to payment in cash or checks. Also, retailers who need to redeem food stamps through a wholesaler will still be able to do so. Therefore, there will be little adverse economic effect on retailers.

This rule has also been reviewed with regard to the requirements of Pub. L. 96–354. The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant adverse effect on a substantial number of small entities. Small wholesalers who now accept food stamps, but will not be able to accept them under this rule, will not be adversely affected, as they can receive payment in cash or check instead of food stamps. Small retail food stores, nonprofit cooperative food-buying clubs, and certain meal services which absolutely need to redeem their food stamps through a wholesaler will still be able to do so.

FNS received comments on the proposed rules (which appeared at 45 FR 74725, published on November 12, 1980) from 42 commentors. Two commentors made comments on bank charges for handling food stamps which were not relevant to the issues raised in the proposed rules, three commentors urged that the rules be made more stringent, and nine commentors recommended that the rules be published as proposed. The remaining 28 commentors said the proposed rules were too restrictive. Of these comments, the largest number came from wholesalers serving small retailers (ten), and from two wholesaler associations. Their main arguments were that wholesalers perform a necessary service for small retailers who may have physical access to banks, but who encounter a number of barriers to using banks to redeem their food stamps. These barriers include language, custom (the small retailer is reportedly often unfamiliar with banking procedures and intimidated by them), cash flow problems (small retailers often make one or two trips a day to a cash-and-carry wholesaler to exchange cash and food stamps for merchandise, whereas banks often do not credit food stamp deposits to the retailers' accounts for several days, and checks are not an accepted medium of exchange in some areas), security (keeping food stamps in the store until they can take them to the bank makes the retailers more vulnerable to robbery), the time lost in going to the bank, especially when the retailer has no one to look after the store while he/she is gone, and bank-imposed barriers, such as deposit fees and requirements that depositors bundle food stamps in bundles of 100 food stamps each.

FNS does not find these arguments convincing; the indication is that the majority of small retailers who redeem food stamps through wholesalers do so as a convenience, rather than as a necessity. Retailers who do not already have checking accounts can open them with ease and learn the relatively simple procedures for using them. The issue as to whether a bank will charge a deposit fee for food stamps, and whether the bank will accept less than 100 food stamps at a time are both subject to negotiation. The same is true of the issue concerning the delay which some retailers have experienced in crediting food stamp accounts. Many small retailers who redeem through wholesalers also maintain bank accounts for the purpose of obtaining

coins and small bills for changemaking. Moreover, accumulating food stamps to make a weekly or daily deposit (which can be done through a night deposit facility) should not present a security problem, since $5 and $10 food stamps can be canceled as soon as they are accepted. This limits their negotiability drastically and has the same effect as when a check is endorsed "For Deposit Only".

These objections fail to consider the fact that participation of wholesalers in the Food Stamp Program is limited to situations where wholesalers are determined to be required for the effective and efficient operation of the program. The overwhelming potential for fraud and abuse occasioned by participation by wholesalers far outweighs the inconvenience possibly resulting to retailers in the absence of participating wholesalers. Moreover, the availability in most locations of numerous banks actively soliciting the business of retail grocers leads FNS to believe that many of these objections may be relieved through negotiation with competing banks.

On the other hand, making this rule less restrictive would leave the program open to fraud and abuse. It would also mean that the Department would have to use its limited investigative resources to police activities in which violations are inherently difficult to identify and investigate. The investigations which the Department's Office of the Inspector General has been able to conduct bear this out. They have been difficult and expensive to conduct, and few in number, but they have uncovered an underground traffic in millions of dollars worth of illegally-acquired food stamps.

Five cooperative wholesalers, four cooperative buying clubs, a buying club member, and a public interest group all stated that the proposed rules would hurt cooperative food-buying clubs. This is because buying clubs usually have little or no working capital, and depend on taking their members' food stamps directly to a wholesaler and using them to buy food ordered by the members. FNS recognizes this as a valid concern and has added cooperative food-buying clubs to the list of organizations that require an authorized wholesaler for the redemption of their food stamps.

Subsequent to publication of the proposed rules on authorizing wholesalers, the Department, on January 16, 1981, at 46 FR 4642, published proposed regulations to implement certain segments of the 1980 amendments to the Food Stamp Act of 1977 (Pub. L. 96-249, 94 Stat. 357, May 26, 1980). Included in these proposed rules were provisions extending eligibility to residents of shelters for battered women and children and provisions for the authorization of such shelters wishing to redeem food stamps at retail food stores through wholesalers. Shelters for battered women and children, like drug addict and alcoholic treatment programs and group living arrangements, are prohibited by the Food Stamp Act of 1977, as amended, from redeeming food stamps through banks. Therefore, such shelters may also need the services of wholesalers to redeem their food stamps. Final regulations for implementing the participation in the program of shelters for battered women and children were published at 46 FR 60160 on December 8, 1981. Accordingly, these final regulations on authorizing wholesalers provide for the authorization of wholesalers needed as food stamp redemption outlets by specific shelters for battered women and children. In addition, these regulations also prevent shelters for battered women and children from redeeming food stamps for anything but food. The proposed regulations for authorizing wholesalers prohibited treatment programs and group living arrangements from redeeming their residents' food stamps for anything but food. As discussed in the proposed rules on authorizing wholesalers, the House Report (House Committee on Agriculture (H. Rept. 95-464, June 24, 1977), p. 337) shows that Congress, in drafting the Food Stamp Act of 1977, did not intend treatment programs to be able to convert their residents' food stamps to cash and, in prohibiting group living arrangements from redeeming through banks, similarly did not intend for group living arrangements to convert food stamps to cash. Since shelters for battered women and children are also prohibited, by the Food Stamp Act of 1977, as amended, from redeeming through banks, the Department has generalized the policy regarding group living arrangements and treatment programs to also restrict shelters for battered women and children to using their residents' food stamps to buy only food.

A public interest group commented that the proposed rule would limit the ability of treatment programs and group living arrangements to get the best value for their money by restricting the number of wholesalers from whom they can purchase. FNS will regard any wholesaler with whom a treatment program, group living arrangement, shelter for battered women and children, cooperative buying club, or retailer with no access to a bank wishes to redeem food stamps as needed for the effective and efficient operation of the program. The fact that one wholesaler is authorized to serve as a redemption outlet for a retail firm or organization will not prevent FNS from authorizing another wholesaler or other wholesalers to serve the same retailer. This was implicit in the proposed rules and no change is needed in the final rules.

The regulation provides that all currently authorized wholesalers be terminated from program participation 120 days from the date of publication of this rulemaking. Another public interest group commented that the rules should allow continued participation by wholesalers after the 120-day period, if the reapplication process is delayed within FNS. FNS anticipates that the decisions on applicants will be made within the 120-day period and will issue instructions to its field offices to that effect.

The Department is modifying the definition of accessory foods (in the definition of staple foods) to make it clear that the definition applies to wholesalers as well as to retailers. This has historically been the Department's policy. However, it has been suggested that the current definition of staple and accessory foods appears to apply only to retailers. The amendment makes it clear that the definition also applies to wholesalers.

Information collection requirements contained in this regulation (Section 278) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0591-0014.

Accordingly, 7 CFR Parts 271 and 278 are amended as follows:

PART 271—GENERAL INFORMATION AND REGULATIONS

§ 271.2 [Amended]

1. The definition of staple food in § 271.2 is amended by adding the phrase "or as a wholesale food concern" before the period in the last sentence of the paragraph.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND BANKS

2. Paragraph 278.1(c) is revised to read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(c) *Wholesalers.* A wholesale food concern may be authorized to accept

coupons only from a specified customer or customers if it meets the requirements of paragraphs (a) and (b) of this section, and FNS determines it is required as a redemption outlet (1) for one or more specified authorized drug addict or alcoholic treatment programs, (2) for one or more specified authorized group living arrangements, (3) for one or more specified authorized shelters for battered women and children, (4) for one or more specified authorized nonprofit cooperative food-purchasing ventures, or (5) for one or more specified authorized retail food stores which are without access to a bank which will redeem their coupons. No firm may be authorized to accept and redeem coupons concurrently as both a retail food store and a wholesale food concern. Authorizations of wholesale food concerns granted prior to January 28, 1982 shall expire on May 31, 1982. Wholesale food concerns desiring to participate in the program after that date must reapply for authorization in accordance with the provisions of this paragraph.

* * * * *

3. Paragraph 278.3(a) is revised to read as follows:

§ 278.3 Participation of wholesale food concerns.

(a) *Accepting coupons.* An authorized wholesale food concern may accept endorsed coupons from one or more specified authorized retail food stores, from one or more specified authorized nonprofit cooperative food-purchasing ventures, from one or more specified authorized group living arrangements, from one or more specified authorized drug addict or alcoholic treatment programs, or from one or more specified authorized shelters for battered women and children if the coupons are accompanied by a properly filled-out and signed redemption certificate, and are not marked "paid," "canceled," or "specimen." A wholesaler authorized to accept coupons from an authorized drug addict or alcoholic treatment program, or from an authorized group living arrangment, or from an authorized shelter for battered women and children, may accept coupons from that treatment program, or group living arrangement, or shelter for battered women and children, only in exchange for food.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance Programs No. 10.551 Food Stamps)

Dated: December 23, 1981.

Patricia M. Kearney,

Confidential Assistant to the Assistant Secretary.

[FR Doc. 81-37119 Filed 12-28-81; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1135

[Docket No. AO-380-A1]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Southwestern Idaho-Eastern Oregon order provisions pertaining to the basis for pooling a distributing plant and to how much milk may be moved directly from producers' farms to nonpool manufacturing plants and still be priced under the order. The amendments are based on industry proposals considered at a public hearing held July 15, 1981. The changes, which have been approved by more than two-thirds of the producers in the market, are necessary to reflect current marketing conditions and to assure orderly marketing in the area.

EFFECTIVE DATE: January 1, 1982.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 22, 1981; published June 25, 1981 (46 FR 32873).

Order Suspending certain provisions: Issued August 28, 1981; published September 3, 1981 (46 FR 44147).

Recommended Decision: Issued October 27, 1981; published November 2, 1981 (46 FR 54374).

Final Decision: Issued December 11, 1981.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than January 1, 1982. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Marketing Program Operations, was issued October 27, 1981, and the decision of the Deputy Assistant Secretary containing all amendment provisions of this order was issued December 11, 1981. The changes effected by this order will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective January 1, 1982, and that it would be contrary to the public interest to delay the effective date of

this amendment for 30 days after its publication in the **Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order as hereby amended as follows:

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. In § 1135.7, paragraph (a)(2) is revised to read as follows:

§ 1135.7 Pool plant.

* * * * *

(a) * * *

(2) Total route disposition (except filled milk) during the month equal to not less than 40 percent of such receipts. A unit consisting of two or more distributing plants operated by a handler shall be considered as one distributing plant for the purpose of meeting this requirement if the handler notifies the market administrator in writing before the first day of the month that the plants should be considered as a unit. The unit shall continue from month to month thereafter without further notification. If, however, there is any change in the composition of the unit, the handler shall notify the market administrator in writing on or before the first day of the month such change is to be made.

* * * * *

2. In § 1135.13, paragraph (f) (3), (4), and (5) are revised to read as follows:

§ 1135.13 Producer milk.

* * * * *

(f) * * *

(3) The total quantity of milk diverted by a cooperative association during the month may not exceed 70 percent in the months of September through February, and 80 percent in other months, of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in § 1135.9(d) may not exceed 70 percent in the months of September through February, and 80 percent in other months, of the producer milk that the handler causes to be delivered to or diverted from pool plants during the month;

(5) The operator of a pool plant may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraph (f) (3) and (4) of this section. The total quantity so diverted during the month may not exceed 70 percent in the months of September through February, and 80 percent in other months, of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

* * * * *

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

Effective date: January 1, 1982.

Signed at Washington, D.C., on December 23, 1981.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 81-37112 Filed 12-28-81; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

Restrictions on Importation of Horses From Denmark

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document makes final the interim rule that extended to Denmark the prohibitions previously placed on the importation into the United States of certain horses from or that have been in countries affected with contagious equine metritis (CEM). This action is necessary to protect the livestock of the United States from such disease.

EFFECTIVE DATE: December 30, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 821, Hyattsville, Maryland 20782, 301–436–8530.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

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

Background

A document published in the **Federal Register** on July 20, 1981 (46 FR 37240–37241) amended the regulations (9 CFR 92.2(i)(1)), to extend to Denmark the prohibitions previously placed on the importation into the United States of certain horses from or that have been in countries affected with contagious equine metritis (CEM).

The Department is responsible for protecting the livestock of the United States against the introduction and dissemination of communicable diseases of livestock. CEM is a communicable disease of horses. Under the circumstances, the prohibition of the importation of certain horses from Denmark is the only alternative

available which protects the livestock of the United States against the introduction and dissemination of CEM into the United States.

It appears that the benefits of preventing the introduction and dissemination of CEM into the United States far outweighs the minimum costs that could be imposed by the final rule.

Written comments were solicited for 60 days after publication of the amendment. No comments were received in response to the amendment. The factual situation which was set forth in the document published in the Federal Register on July 20, 1981, still provides a basis for the amendment.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

After careful consideration of all relevant information available to the Department, the Deputy Administrator has determined that the interim rule revising 9 CFR 92.2(i)(1) should be made a permanent regulation as it appeared in the Federal Register on July 20, 1981.

(Sec. 2, 32 Stat. 792, as amended, secs. 4 and 11, 76 Stat. 130, 132, (21 U.S.C. 111, 134c, 134f); 37 FR 28464, 28477; 38 FR 19141)

Done at Washington, D.C., this 22nd day of December 1981.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 81-37121 Filed 12-28-81; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R-0380; Reg. D]

Reserve Requirements of Depository Institutions; International Banking Facilities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: The Board of Governors has issued an interpretation concerning the extent to which international banking facilities ("IBFs") may purchase or sell IBF-eligible assets such as loans (including loan participations), securities, Eurocurrency certificates of deposit, and bankers' acceptances from (or to) third parties under Regulation D—Reserve Requirements of Depository Institutions. The interpretation generally provides that IBFs may purchase IBF-eligible assets from, or sell such assets to, any domestic or foreign customer provided that the transactions are at arm's length without recourse. The requirement that the proceeds of IBF assets be used to finance business outside the United States will apply to assets acquired by IBFs from third parties.

EFFECTIVE DATE: December 16, 1981.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Paul S. Pilecki, Senior Attorney (202/452-3281), Legal Division; or Sydney J. Key, Economist (202/452-3522), Division of International Finance, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the Board's authority under sections 19, 25, and 25(a) of the Federal Reserve Act (12 U.S.C. 461 *et seq.*, 601 *et seq.*, 611 *et seq.*) and section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), Regulation D (12 CFR Part 204) is amended by adding a new § 204.122 as follows:

§ 204.122 Secondary market activities of International Banking Facilities.

(a) Questions have been raised concerning the extent to which International Banking Facilities may purchase (or sell) IBF-eligible assets such as loans (including loan participations), securities, CDs, and bankers' acceptances from (or to) third parties. Under the Board's regulations, as specified in § 204.8 of Regulation D, IBFs are limited, with respect to making loans and accepting deposits, to dealing only with certain customers, such as other IBFs and foreign offices of other organizations, and with the entity establishing the IBF. In addition, an IBF may extend credit to a nonbank customer only to finance the borrower's non-U.S. operations and may accept deposits from a nonbank customer that are used only to support the depositor's non-U.S. business.

(b) Consistent with the Board's intent, IBFs may purchase IBF-eligible assets [1] from, or sell such assets to, any domestic or foreign customer provided that the transactions are at arm's length without recourse. Therefore, an IBF may not purchase such assets from, or sell such assets to, affiliates of the institution establishing the IBF. (However, this restriction does not affect the IBF's ability to purchase (or sell) assets directly from (or to) the institution establishing the IBF; such purchases from the institution establishing the IBF would continue to be subject to Eurocurrency reserve requirements except during the initial four-week transition period.) Since repurchase agreements are regarded as loans, transactions involving repurchase agreements are permitted only with customers who are otherwise eligible to deal with IBFs, as specified in Regulation D.

(c) In the case of purchases of assets, in order to determine that the Board's use-of-proceeds requirement has been met, it is necessary for the IBF (1) to ascertain that the applicable IBF notices and acknowledgments have been provided, or (2) in the case of loans or securities, to review the documentation underlying the loan or security, or accompanying the security (e.g., the prospectus or offering statement), to determine that the proceeds are being used only to finance the obligor's operations outside the U.S., or (3) in the case of loans, to obtain a statement from either the seller or borrower that the proceeds are being used only to finance operations outside the U.S., or in the case of securities, to obtain such a statement from the obligor, or (4) in the case of bankers' acceptances, to review the underlying documentation to determine that the proceeds are being used only to finance the parties' operations outside the United States.

(d) Under the Board's regulations, IBFs are not permitted to issue negotiable Euro-CDs, bankers' acceptances, or similar instruments. Accordingly, consistent with the Board's intent in this area, IBFs may sell such instruments issued by third parties that qualify as IBF-eligible assets provided that the IBF, its establishing institution and any affiliate of the institution establishing the IBF do not endorse, accept, or otherwise guarantee the instrument.

By order of the Board of Governors, December 22, 1981.

William W. Wiles,

Secretary of the Board.

[FR Doc. 81-37020 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

[1] In order for an asset to be eligible to be held by an IBF, the obligor or issuer of the instrument, or in the case of bankers' acceptances, the customer and any endorser or acceptor, must be an IBF-eligible customer.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Rules of Practice and Procedures

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") has amended its Rules of Practice and Procedures, which contain rules for the conduct of administrative proceedings before the FDIC. A new subpart M to the Rules of Practice and Procedures implements the Equal Access to Justice Act. That act allows certain parties who prevail against the FDIC in contested administrative proceedings to recover litigation expenses from the FDIC, if the position of the FDIC in the proceeding was not substantially justified. The new subpart establishes procedures to be used in applying for fee awards and in determining whether the conditions for a fee award have been met and, if so, the proper amount for the award. Additionally, the FDIC has amended preexisting subparts of the Rules of Practice and Procedures to delegate certain responsibilities to the FDIC's Executive Secretary and to correct certain procedural impediments to efficient operation. These changes are intended to enhance agency capability and responsiveness. The changes delegate authority to the Executive Secretary to perform many ministerial functions similar to duties of clerks of court, and they transfer to the administrative law judge certain duties formerly handled by the Executive Secretary.

EFFECTIVE DATE: December 29, 1981.

FOR FURTHER INFORMATION CONTACT: On fee awards, Brian D. Alprin, Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429 (202–389–4637); on all other subjects, James L. Meador, Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429 (202–389–4422).

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 43,431–43,452 of the Federal Register of August 28, 1981, and comments were invited for sixty days ending October 27, 1981. Written comments were received from officials of three banks and from the Office of the Chairman of the Administrative Conference of the United States ("ACUS"). The following summarizes the comments and actions taken.

Equal Access to Justice Act

Two commentators suggested that the FDIC should undertake to pay fees of all parties who prevail against it when the position of the FDIC was not substantially justified, rather than pay awards only to prevailing parties who meet standards relating to net worth and number of employees. The Equal Access to Justice Act ("EAJA") defines eligible parties to exclude "any individual whose net worth exceeded $1,000,000 at the time the adversary adjudication was initiated, and any sole owner of an unincorporated business, or any partnership, corporation, association, or organization whose net worth exceeded $5,000,000 at the time the adversary adjudication was initiated" and "any sole owner of an unincorporated business, or any partnership, corporation, association, or organization, having more than 500 employees at the time the adversary adjudication was initiated." 5 U.S.C. 504(b)(1)(B). Since Congress deliberately set financial criteria that limit the EAJA's applicability to those eligible parties specified in the FDIC's proposal, the FDIC is reluctant to amend its proposal to mandate the payment of fees of prevailing parties regardless of their size and financial means—a result apparently not desired by Congress. *See* H.R. Rep. No. 96–1418, 96th Cong., 2d Sess. 15 (1980). For a similar reason, the FDIC declines to follow the recommendation of a commentator who suggested that the FDIC pay all actual expenses of an applicant entitled to an award (rather than "reasonable expenses" as desired by Congress) and pay punitive damages in some situations (a matter not provided for by Congress).

The ACUS observed that § 308.98 of the proposed rule, which clarifies the meaning of the term "prevailing party," fails to mention that a party may prevail through the obvious course of winning a fully litigated proceeding on the merits. The section has accordingly been revised to accommodate this point.

The ACUS recommended the deletion of § 308.97(f) of the proposed rule, which includes in an applicant's net worth the value of assets disposed of, and excludes the value of liabilities incurred, for the purpose of meeting an eligibility standard. The ACUS also recommended the deletion of proposed § 308.102(e), which requires an applicant to describe any transactions within six months before the initiation of the proceeding which reduced the applicant's net worth below the relevant net-worth ceiling. In the view of the ACUS, the likelihood of sham transactions is small compared to the burden of the proposed disclosure requirement, since potential applicants will normally have great difficulty in anticipating the date of initiation of administrative proceedings. The FDIC believes that potential respondents are often able to predict when formal administrative proceedings will begin, given the preliminary informal discussions that typify the early stages of an FDIC proceeding. The FDIC does agree, however, that in most cases the disclosure requirement is not necessary, and accordingly the requirement has been eliminated. The rule requiring net worth to be determined without giving effect to transactions undertaken to meet an eligibility standard has been retained. It should be noted that when disclosure of such transactions is thought necessary, the administrative law judge and the Board of Directors retain power to call for disclosure of them under the last sentence of § 308.102(c).

The ACUS objected to the omission of several rules that were in the model rules published by the ACUS. The ACUS thought that clarity and completeness would be served by their inclusion. Rather than reflect substantive disagreement on any legal matter, these comments reflect differences of rulemaking style between the FDIC and the ACUS. With respect to these omissions the FDIC adheres to its original decisions.

The ACUS recommended the alteration of the requirement of § 308.101(2) that an application contain "an identification of each issue" with regard to which the applicant believes that the position of the FDIC was not substantially justified. The ACUS would prefer an identification of "the position in the proceeding" that the applicant alleges was not substantially justified. The FDIC prefers the language it proposed, which it hopes will allow the questions on substantial justification to be identified more narrowly in the application. The fear of the ACUS, that the reference to individual issues may imply that parties may receive awards for their success on mere procedural issues or on one of the FDIC's alternative theories of a case, is dispelled by § 308.98. That section, which clarifies the meaning of the term "prevailing party," permits awards in connection with victory on the merits, a favorable settlement, a dismissal, substantial vindication on the significant substantive matters at issue, or success on a discrete significant substantive issue or issues. Section 308.98 does not permit an award for success on a procedural point or on an alternative FDIC theory.

The ACUS criticized § 308.104(d) as too narrow. This section permits an application to be filed whenever an applicant has "prevailed" but not later than thirty days after final disposition of the proceeding. In the view of the ACUS, provision should be made for an immediate filing by a party who has

prevailed on a separable issue in the proceeding prior to final disposition of the entire proceeding. The issue is not expected to arise in an FDIC proceeding, as interim orders are normally not entered on significant substantive matters. The ACUS is correct, however, that the EAJA countenances fee awards following final disposition of interim matters. Section 308.104(d) has been changed to reflect the comment of the ACUS.

Section 308.105(d) permits the applicant to file a reply pleading only when the answer of counsel for the FDIC raises affirmative defenses. The ACUS recommended that replies be permitted in all cases. The FDIC believes that such a rule would move applicants to file replies in virtually all cases, whether needed or not, rather than forsake a perceived litigative advantage. Should full and fair resolution of an issue require that an applicant be permitted to file a reply when a reply is not otherwise permitted, however, a request for permission may be made under § 308.107.

A commentator suggested that the Board of Directors of the FDIC be required to abide by any recommended decision of the administrative law judge which recommends a fee award. The FDIC believes that the purport of the EAJA is to vest the ultimate decision on the fee award in the body that adjudicated the underlying controversy. With respect to all contested FDIC proceedings covered by the EAJA, the function of the administrative law judge is recommendatory only, and the Board of Directors renders the actual decision. Thus the conferral or recommendatory authority on the administrative law judge and the retention of decision-making authority by the Board of Directors would be consistent with FDIC practice and would appear the suitable apportionment of roles for fee-award proceedings.

A technical change has been made in the proposed regulation on the recommendation of the staff of the FDIC. Proposed §§ 308.97(d) and 308.102(d) established that a bank's net worth at the time of the initiation of a proceeding would be considered to be the total equity capital as reported on the bank's last Consolidated Report of Condition filed before the initiation of the proceeding. In recognition that the date of actual submission should not receive priority over the reporting date the rule now refers to the report that is filed for the last reporting date before the initiation of the proceeding.

Minor stylistic or clarifying changes have been made to §§ 308.97(f), 308.98(b) (which had been proposed as §§ 308.98(a)), and 308.102(d). A new § 308.105(e) has been added to make it clear that filings in the nature of pleadings, if not permitted by a specific rule, may be submitted only with the permission of the administrative law judge.

Technical Changes to Rules of Practice and Procedures

No comments were received on the proposed technical changes to preexisting subparts of Part 308. These changes have been adopted as proposed, except that the heading to Subpart B has been reworded for the sake of accuracy, and minor technical, stylistic, or clarifying changes have been made to §§ 308.01(d), 308.01(j), 308.03, 308.07(b), and 308.21(b).

Certification Under Regulatory Flexibility Act

A certification that this rule will not have a significant economic impact on a substantial number of small entities was published at 46 FR 43,433 (1981).

Effective Date

This rule is effective December 29, 1981. The requirement of thirty days' advance notice does not apply because the rule establishes or changes procedures for the conduct of administrative proceedings. As a procedural rule it is not "substantive" under 5 U.S.C. 553(d) (1976). In addition, good cause exists for the rule to be made effective immediately. Since the effective date of the EAJA, October 1, 1981, the FDIC has been without formal, published procedures for the submission and consideration of fee applications. An immediate effective date for the present rule will clarify the procedures that are available to applicants, thus promoting the timely pursuit of appropriate redress under the EAJA by eligible parties.

For the reasons set out in the preamble, Part 308 of chapter III of title 12 of the *Code of Federal Regulations* is revised to read as set forth below.

PART 308—RULES OF PRACTICE AND PROCEDURES

Subpart A—Definitions and Rules of Construction

Sec.
308.01 Definitions.
308.02 Rules of construction.

Subpart B—Rules of Practice Generally

308.03 Scope.
308.04 Appearance and practice before the FDIC.
308.05 Notice of hearing.
308.06 Answer.
308.07 Conduct of hearings.
Sec.
308.08 Subpenas.
308.09 Procedure on depositions.
308.10 Payment of witness fees.
308.11 Rules of evidence.
308.12 Motions.
308.13 Proposed findings and conclusions, supporting and reply briefs, and recommended decision.
308.14 Exceptions to proposed findings and conclusions and recommended decision.
308.15 Briefs in support of exceptions.
308.16 Notice of submission to the Board of Directors.
308.17 Oral argument before the Board of Directors.
308.18 Decision of the Board of Directors.
308.19 Filing papers with the Executive Secretary.
308.20 Documents in proceedings confidential.
308.21 Service of papers other than subpenas.
308.22 Computing time.

Subpart C—Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

308.23 Scope.
308.24 Notice of finding grounds for termination of insurance.
308.25 Extraterritorial acts of foreign banks or their directors or trustees.
308.26 Failure of a foreign bank to secure removal of personnel.
308.27 Notice of intention to terminate insured status and hearing.
308.28 Order terminating insured status.
308.29 Consent to termination of insured status.
308.30 Notice to depositors of termination of insured status.
308.31 Termination of insured status of bank not engaged in the business of receiving deposits, other than trust funds.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

308.32 Scope.
308.33 Grounds for cease-and-desist orders.
308.34 Notice to State supervisory authority.
308.35 Notice of charges and of hearing, and consent.
308.36 Issuance and effective date of cease-and-desist order.
308.37 Issuance and effective date of temporary cease-and-desist order.
308.38 Extraterritorial acts of foreign banks or their officials.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders

308.39 Scope.
308.40 Grounds for removal or prohibition.
308.41 Notice to State supervisory authority.
308.42 Notice of intention to remove, hearing and consent.
308.43 Issuance and effective date of removal or prohibition order.
308.44 Grounds for suspension or prohibition.
308.45 Issuance and effective date of suspension or prohibition order.
308.46 Extraterritorial acts of officials of foreign banks.

Subpart F—Procedures Applicable to Proceedings Pursuant to Section 10(c) of the Federal Deposit Insurance Act

Sec.
308.47 Scope.
308.48 Order to conduct proceedings.
308.49 Powers of presiding officer.
308.50 Proceedings confidential.
308.51 Rights of witnesses.
308.52 Service of subpena.
308.53 Transcripts.
308.54 Special examinations and examinations of closed banks.

Subpart G—Procedures and Standards Applicable to Suspension, Removal, and Prohibition Where Felony Charged, and Petition for Reconsideration of Denial of an Application Under Section 19 of the Federal Deposit Insurance Act

308.55 Scope.
308.56 Relevant considerations.
308.57 Notice of suspension or prohibition.
308.58 Order of removal or prohibition.
308.59 Notice of opportunity and request for hearing.
308.60 Waiver of hearing.
308.61 Hearing.
308.62 Decision of the Board of Directors.
308.63 Reconsideration by the Board of Directors.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders or Certain Federal Statutes

308.64 Scope.
308.65 Violation of order as ground for assessment.
308.66 Violation of laws limiting dealings with bank officials and affiliates as ground for assessment.
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308.69 Notice of assessment of civil penalty, and opportunity and request for hearing.
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Subpart I—Rules and Procedures Applicable to Proceedings Relating To Disapproval of Acquisition of Control

308.73 Scope.
308.74 Grounds for disapproval.
308.75 Notice of disapproval, and opportunity and request for hearing.
308.76 Exceptions.
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Subpart J—Rules and Procedures Applicable to Proceedings Relating To Assessment of Civil Penalties for Willful Violation of the Change in Bank Control Act

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308.80 Waiver of hearing.
308.81 Hearing.
308.82 Assessment.
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Subpart K—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them, and Upon Clearing Agencies or Transfer Agents

Sec.
308.84 Scope.
308.85 Grounds for imposition of sanctions.
308.86 Notice and consultation with the Securities and Exchange Commission.
308.87 Notice of intention to impose sanctions.
308.88 Hearing.
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Subpart L—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

308.90 Scope.
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308.93 Notice of hearing.
308.94 Hearing.
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Subpart M—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

308.96 Scope.
308.97 Eligibility of applicants.
308.98 Prevailing party.
308.99 Standards for awards.
308.100 Measure of awards.
308.101 Contents of application.
308.102 Statement of net worth.
308.103 Statement of fees and expenses.
308.104 Filing and service of documents.
308.105 Answer to application.
308.106 Comments by other parties.
308.107 Further proceedings.
308.108 Recommended decision.
308.109 Decision of the Board of Directors.
308.110 Payment of awards.

Authority: Sec. 2(9), Pub. L. No. 797, 64 Stat. 881 (12 U.S.C. 1819); sec. 18, Pub. L. No. 94-29, 89 Stat. 155 (15 U.S.C. 78w); sec. 801, Pub. L. No. 95-630, 92 Stat. 3641 (12 U.S.C. 1972); sec. 203, Pub. L. No. 96-481, 94 Stat. 2325 (5 U.S.C. 504).

Subpart A—Definitions and Rules of Construction

§ 308.01 Definitions.

For purposes of this part, except where explicitly stated to the contrary,

(a) The term "bank" means, in general, any bank to which reference is being made. For purposes of subpart F, the term means an insured bank or its affiliate, an institution applying to become an insured bank, or a branch of a foreign bank (except where used in § 308.54);

(b) The term "Board of Directors" or "Board" means the Board of Directors of the Federal Deposit Insurance Corporation;

(c) The term "FDIC" means the Federal Deposit Insurance Corporation;

(d) The term "depositors" as used in subpart D, notwithstanding any limitation in any other paragraph of § 308.01, includes the customers of any municipal securities dealer, participants in a clearing agency, and persons doing business with a transfer agent, if for the municipal securities dealer, clearing agency, or transfer agent the FDIC is the appropriate regulatory agency;

(e) The term "Executive Secretary" means the Executive Secretary of the Federal Deposit Insurance Corporation;

(f) For the purposes of § 308.07(c), the term "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. This does not include requests for status reports;

(g) The term "foreign bank" means any company which engages in the business of banking and which is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands. "Foreign bank" includes, without limitations, foreign commercial banks, foreign merchant banks and other institutions which engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(h) The term "insured bank" means any bank or banking institution (including a foreign bank having an insured branch) the deposits of which are insured in accordance with the Federal Deposit Insurance Act;

(i) The term "insured branch" means a branch of a foreign bank any deposits of which are insured in accordance with the Federal Deposit Insurance Act;

(j) The term "insured nonmember bank" means any bank or banking institution the deposits of which are insured in accordance with the Federal Deposit Insurance Act and which is not a national bank, a District bank, or a member of the Federal Reserve System. The term also includes a foreign bank having an insured branch, and any municipal securities dealer, clearing agency or transfer agent for which the FDIC is the appropriate regulatory agency (notwithstanding any limitation in any other paragraph of § 308.01);

(k) For the purposes of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" as used in subpart E means an employee or officer who has management functions and the term "director" includes an advisory or honorary director, a trustee of a bank under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

For other purposes, the terms "officer" and "director" as used in this part are defined according to common usage in the banking industry;

(l) The term "official" means any director, trustee, officer, employee or agent of a bank to which reference is being made, or any other person participating in the conduct of the affairs of a bank;

(m) The term "party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party, unless the context otherwise suggests. A person or agency may be admitted for a limited purpose;

(n) For purposes of subparts I and J, the term "person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other entity;

(o) The term "presiding officer" means any person designated by the Board of Directors to conduct a hearing, or proceedings pursuant to section 10(c) of the Federal Deposit Insurance Act;

(p) The term "proceedings pursuant to section 10(c)" means the exercise of any power specified in section 10(c) or 8(n) of the Federal Deposit Insurance Act, or any proceeding conducted pursuant to the exercise of such powers.

§ 308.02 Rules of construction.

Throughout this part, any use of a term in the singular shall include the plural, and the plural shall include the singular, if such use would be appropriate.

Subpart B—Rules of Practice Generally

§ 308.03 Scope.

This subpart prescribes rules of practice and procedures followed by the FDIC in hearings pursuant to the provisions of the Federal Deposit Insurance Act or other applicable law pertaining to:

(a) Involuntary termination of the insured status of any bank including an insured branch of a foreign bank;

(b) Issuance of cease-and-desist orders against any insured nonmember bank or its official;

(c) Assessment of civil penalties against (1) an insured nonmember bank or its official, for violation of a cease-and-desist order which has become final, or (2) an insured nonmember bank or its official, for violation of (i) the provisions of section 22(h) or 23A of the Federal Reserve Act, made applicable by section 18(j) of the Federal Deposit Insurance Act, or (ii) the provisions of section 106(b)(2) of the Bank Holding Company Act Amendments of 1970, as amended;

(d) Issuance of orders that remove or suspend from office or prohibit from further participation in the conduct of the affairs of an insured nonmember bank, a director or officer, or that prohibit any other person from further participation in the conduct of the affairs of such a bank, except where the removal or suspension or prohibition is within the scope of subpart G as set forth in § 308.55;

(e) Disapproval of a proposed acquisition of control of an insured nonmember bank; and

(f) Imposition of sanctions upon (1) any municipal securities dealer for which the FDIC is the appropriate regulatory agency, (2) any person associated or seeking to become associated with such a municipal securities dealer, or (3) any clearing agency or transfer agent for which the FDIC is the appropriate regulatory agency (except for hearings on postponement of registration by such clearing agency or transfer agent pending registration denial proceedings, and for hearings on suspension of registration by such clearing agency or transfer agent pending registration revocation proceedings).

§ 308.04 Appearance and practice before the FDIC.

(a) *Qualification, authorization and notice of appearance.* Any member in good standing of the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia, may represent others before the FDIC upon filing with the Executive Secretary a written declaration of current qualification to practice and an authorization to represent the particular party. Any other person desiring to appear before, or transact business with, the FDIC in a representative capacity may be required to file with the Executive Secretary a power of attorney showing authority to act in such capacity, and may be required to demonstrate to the satisfaction of the Executive Secretary possession of the requisite qualifications. Attorneys and representatives of parties shall file a written notice of appearance with the Executive Secretary or the administrative law judge.

(b) *Summary suspension.* Contemptuous conduct at an argument before the Board of Directors or at a hearing before an administrative law judge shall be grounds for exclusion and suspension for the duration of the argument or hearing.

§ 308.05 Notice of hearing.

Whenever a hearing within the scope of this subpart is ordered by the Board of Directors, a notice of hearing shall be given by the Executive Secretary (or designee of the Board) to the party afforded the hearing and to any appropriate supervisory authority. The notice shall indicate the time, place, and nature of the hearing, the legal authority and jurisdiction for the hearing, and shall contain a statement of the matters of fact or law constituting the grounds for the hearing. The notice shall be delivered by personal service, by registered or certified mail to the party's last known address, or by other appropriate means, sufficiently in advance of the hearing date to comply with the provisions of the Federal Deposit Insurance Act.

§ 308.06 Answer.

(a) *Filing.* Every party to a proceeding shall file an answer with the Executive Secretary within 20 days after service of the notice of hearing upon the party afforded the hearing, unless the Board specifies a different filing period of not less than 10 days after service of the notice. For good cause shown, the Board, the Executive Secretary or the administrative law judge may permit filing of an answer after expiration of the filing period.

(b) *Requirements; effect of failure to deny.* An answer filed under this section shall specifically admit, deny, or state that the party lacks sufficient information to admit or deny each allegation. A statement of lack of information shall have the effect of a denial. When a party intends to deny part of an allegation, that part shall be denied and the remainder specifically admitted. Any allegation not denied shall be deemed admitted.

(c) *Admitted allegations.* If a party elects not to contest any of the allegations of fact in the notice, the party's answer shall consist of a statement that all of the allegations are admitted to be true. Such an answer shall constitute a waiver of hearing on the facts and allegations contained in the notice. This answer and the notice shall provide a record basis upon which the administrative law judge shall make a recommended decision (containing findings of fact, conclusions of law and proposed order) that shall be filed with the Executive Secretary. The recommended decisions shall be served on the party, who may file exceptions thereto within the time period provided in § 308.14(a).

(d) *Effect of failure to answer.* Failure of a party to file an answer required by

this section within the time provided shall be deemed a waiver of the right to appear and contest the allegations of the notice of hearing and shall authorize the administrative law judge, without further notice to the party, to find the facts to be as alleged in the notice and to file with the Executive Secretary a recommended decision containing such findings and appropriate conclusions.

§ 308.07 Conduct of hearings.

(a) *Selection of administrative law judge.* Unless otherwise directed by the Board, a hearing within the scope of this subpart shall be held before an administrative law judge selected by the Office of Personnel Management. The provisions of this section shall not apply to a hearing before the Board.

(b) *Authority of administrative law judge.* Hearings governed by this subpart shall be conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554–557), and the provisions of this subpart. The administrative law judge shall conduct the hearing in a fair and impartial manner and shall avoid delay in the disposition of proceedings. The administrative law judge shall have all powers necessary to that end, including the power:

(1) To administer oaths and affirmations;

(2) To issue subpenas and subpenas duces tecum as authorized by law, and to revoke, quash, or modify any such subpena;

(3) To take depositions or cause depositions to be taken;

(4) To hold conferences for the settlement or simplification of issues or for any other proper purpose;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To receive relevant evidence and rule upon the admission of evidence and offers of proof;

(7) To grant extensions of time for filing or performing any act required or permitted within a specified time during the course of a proceeding for good cause shown;

(8) To continue or adjourn a hearing from time to time and place to place, as permitted by law or as agreed by the parties;

(9) To consider and rule upon all procedural and other motions appropriate in an adversary proceeding, except that an administrative law judge shall not have power to decide any motion to dismiss the proceedings or other motion resulting in final determination of the merits of the proceeding; and

(10) To call for the production of further evidence, to permit oral argument and submission of briefs, and to reopen a hearing in accordance with § 308.07(j).

(11) Without limitation on the foregoing provisions of this paragraph, the administrative law judge shall, subject, to the provisions of this part, have all the authority provided in section 556(c) of title 5 of the United States Code.

(c) *Ex parte communications prohibited.* (1) The following prohibitions against ex parte communications apply from the time a proceeding is noticed for hearing: However, when the person responsible for the communication has knowledge that the proceeding will be noticed, the prohibitions apply from the time such knowledge is acquired.

(i) No interested person outside the FDIC shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to anyone who is or may reasonably be expected to be involved in the decisional process.

(ii) No person who is or may reasonably be expected to be involved in the decisional process shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any interested person outside the FDIC.

(2) Except as authorized by law, the administrative law judge shall not consult anyone within the FDIC on any fact in issue, unless upon notice and opportunity for all parties to participate. The administrative law judge shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the FDIC engaged in the performance of investigative or prosecuting functions. An officer, employee or agent engaged in the performance of such functions in any case shall not, in that case or a factually related case, participate or advise in the decision of the administrative law judge, except as a witness or counsel in the proceedings, or as otherwise authorized by law.

(3) If an ex parte communication is made or knowingly caused to be made, all such written communications, any written responses, and memoranda stating the substance of any oral responses, shall be placed on the public record.

(4) Upon receipt of a communication knowingly made or caused to be made in violation of § 308.07(c)(1)(i), the responsible party may be required to show cause why such party's claim or interest should not be dismissed, denied, or otherwise adversely affected. To the extent consistent with the interests of justice and the policy of the Federal Deposit Insurance Act, knowing violation of § 308.07(c)(1)(i) may be ground for a decision adverse to a party in violation of that section.

(d) *Prehearing conferences.* (1) Upon the initiative of the administrative law judge, or at the request of any party, counsel for all parties may be directed to meet at a specified time and place prior to the hearing, or to make written submissions, for the purpose of considering the following:

(i) Simplification and clarification of the issues;

(ii) Stipulations, admissions of fact, admissions of contents and authenticity of documents;

(iii) Matters of which official notice will be taken; and

(iv) Other matters which may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and of documents or other exhibits to be introduced in evidence.

(2) At the request of any party, the conference shall be recorded. The administrative law judge shall enter in the record an order reciting the results of the conference, any rulings upon matters considered at the conference, and any directions to the parties. The subsequent course of the proceeding shall be controlled by this order, which may be modified to prevent manifest injustice.

(e) *Attendance at hearings.* A hearing shall ordinarily be private and shall be attended only by the parties, their representatives or counsel, witnesses while testifying, and other persons having an official interest in the proceedings. To the extent authorized by law, the Board of Directors in its discretion may permit other persons to attend on written request by a party or on the Board's own motion, or the Board may order a public hearing.

(f) *Order of procedure.* The counsel for the FDIC shall open and close.

(g) *Transcript of testimony.* Hearings shall be recorded and copies of the transcript made available to any party upon payment of the cost therefor. When the hearing is public, copies of the transcript shall be similarly available to other interested persons.

(h) *Filing and transmittal of the record.* A copy of the transcript duly certified by the reporter, and all exhibits, papers and requests filed in the proceeding, shall be filed by the reporter with the administrative law judge. The administrative law judge shall promptly serve notice upon all parties of such filing and transmittal.

(i) *Changes of time; change of hearing location; continuance.* Except as otherwise expressly provided by law, the Board of Directors may provide time limits different from those specified in this subpart or in a notice of hearing, upon its own initiative or for good cause shown, and the Board may change the time and place for a hearing to commence. The administrative law judge may continue or adjourn a hearing in accordance with § 308.07(b)(8).

(j) *Reopening of hearing.* The administrative law judge, upon appropriate notice, may reopen a hearing at any time prior to certification of the administrative law judge's recommended decision to the Executive Secretary. The Board of Directors may reopen a case in accordance with § 308.18.

(k) *Opportunity for informal settlement.* At any time, and without prejudice to the rights of the parties, any interested party may submit to the Executive Secretary for consideration by the Board of Directors, written offers or proposals for settlement of a proceeding. An offer, proposal, or counter-offer shall not be admissible in evidence over the objection of any party. Steps taken toward informal settlement shall not preclude settlement of any proceeding through the regular adjudicatory process by filing an answer or exceptions as provided in § 308.06 and § 308.76, or by submission of the case to the administrative law judge on a stipulation of facts and an agreed order.

§ 308.08 Subpenas.

(a) *Issuance.* The administrative law judge, or the Executive Secretary in the event the administrative law judge is unavailable, may issue subpenas or subpenas duces tecum at the request of any party, requiring the attendance or deposition of witnesses or the production of documentary evidence in connection with a hearing pursuant to subparts B, C, D, E, H, I or K of this part, from any State, Commonwealth or territory at any designated place of hearing. Notice of issuance of the subpena or subpena duces tecum shall be served upon each of the parties within a reasonable time not less than 10 days before the date fixed for taking the deposition or production of documents.

(1) The party seeking the subpena shall include a statement showing the general relevance and reasonable scope of the testimony or other evidence sought. If, after consideration of all circumstances, the administrative law judge or the Executive Secretary determines the subpena in whole or in part is unreasonable, oppressive, excessive in scope or unduly burdensome, the administrative law judge or the Executive Secretary may refuse to issue the subpena or may issue it upon such conditions as fairness requires.

(2) The administrative law judge or the Executive Secretary by subpena may order that a deposition be taken, upon a showing that (i) the proposed witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable, and (ii) the testimony will be material, and (iii) taking the deposition will not result in any undue burden to any other party or in undue delay of the proceeding. The subpena shall name the witness whose deposition is to be taken and specify the time and place for taking the deposition and the person before whom the deposition is to be taken. The time, place and person before whom the deposition is to be taken may differ from those stated in the application.

(b) *Application.* A party requesting the deposition of a witness or the production of documents, shall apply in writing to the administrative law judge, or to the Executive Secretary in the event the administrative law judge is unavailable, stating the reasons for the application, the name and address of the witness or the person who is to produce the documents, the matters concerning which the witness is expected to testify or the contents of the documents, the relevance of the testimony or documents, the time and place for taking the deposition or production of documents, and the name and address of the person before whom the deposition is to be taken or the documents are to be produced. The party making the application shall serve a copy of the subpena and application on every other party to the proceeding. Any party opposing the issuance of the subpena may file a response or opposition to the application within 10 days. Failure to do so within the time allowed will be deemed a waiver of objection to the subpena.

(c) *Service of subpena.* Service of a subpena shall be made by delivering a copy of the subpena to the person named therein and by tendering the fees for one day's attendance and mileage as specified in § 308.10. A subpena issued on behalf of the FDIC shall be similarly served, however, the fees for attendance and mileage need not be tendered at the time of service. If service is made by the U.S. Marshal, a deputy U.S. Marshal or an employee of the FDIC, a return of service shall be made. If service is made by any other person, that person shall make a return of service by affidavit on or with the original subpena that states how service was made. The reasons for failure of service shall be stated. The original subpena with the required return shall be promptly delivered to the administrative law judge.

(1) *Natural persons.* Delivery of a copy of a subpena and tender of fees to a natural person may be made by handing them to the person; or by leaving them at the person's office with someone in charge; or by leaving them in a conspicuous place in the office if there is no one in charge; or by leaving them at the person's dwelling place or usual place of abode with someone of suitable age and discretion residing there; or by mailing them by registered or certified mail to the last known address of the person; or by any method that gives actual notice to the person and makes the fees available prior to the return date.

(2) *Other entities.* When the person to be served is not a natural person, delivery of a copy of the subpena and tender of the fees may be effected by handing them to a registered agent for service or to an officer or director or agent in charge of any office of the person; or by mailing them by registered or certified mail to the representative at the person's last known address; or by any method that gives actual notice to the person's authorized representative and makes the fees available prior to the return date. Any service on a foreign bank may be made on any branch or agency located within any State or the District of Columbia, but if the service is in connection with an action or proceeding involving one or more such branches or agencies, service shall be made on at least one branch or agency so involved.

(d) *Motion to quash.* A person named in a subpena or subpena duces tecum who is not a party to the proceeding and who has not had the opportunity to oppose the issuance of the subpena pursuant to § 308.08(b) may apply to the administrative law judge, or to the Executive Secretary if the administrative law judge is unavailable, to revoke, quash, or modify the subpena. A statement of the reasons for the application must accompany it and notice of the application must be given to the party requesting the subpena. The application must be made prior to the time for compliance specified in the subpena and not more than 10 days after the date of service of the subpena.

§ 308.09 Procedure on depositions.

(a) *When taken.* The administrative law judge, or the Executive Secretary in the event the administrative law judge is

unavailable, may order by subpena evidence to be taken by deposition at any stage of a proceeding. A deposition may be taken by the administrative law judge, or before any person having power to administer oaths and who is designated by the Executive Secretary or the administrative law judge. A deposition shall be taken no sooner than 10 days after the parties to the proceeding have received notice of the deposition, where such notice has not been waived.

(b) *Procedure.* Each witness testifying upon oral deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. Objections to questions or evidence shall be in short form, stating the grounds for the objection. The person taking the deposition shall not have power to rule upon questions of competency or materiality or relevance of evidence. Failure to object to questions or evidence shall not be deemed a waiver except where the ground for the objection is one which might have been avoided or removed if presented at that time. All questions, answers, and objections (not including argument or debate) shall be recorded by the person taking the deposition, or under such person's direction. The deposition shall be subscribed by the witness, unless the parties by stipulation have waived the signing, or the witness is ill or cannot be found or has refused to sign. If the deposition is not subscribed by the witness, the person taking the deposition shall state this on the record and the reason therefor. The transcript shall be certified as a true and complete transcript of the deposition by the person taking it. Such person shall promptly send by registered or certified mail, the original of the deposition, and the originals of all exhibits, to the administrative law judge, unless otherwise directed in the order authorizing the deposition. Interested parties may make their own arrangements with the person taking the deposition for copies of the transcript and exhibits.

(c) *Introduction as evidence.* The deposition or any part of it may be read in evidence by any party to a proceeding, subject to appropriate rulings on objections to questions or evidence noted during the taking of the deposition and objections that would be valid were the witness testifying in person. This does not include objections waived in accordance with the fourth sentence of paragraph (b) of this section. Only those portions of a deposition received in evidence at the hearing shall constitute a part of the record upon which a decision shall be based.

§ 308.10 Payment of witness fees.

Witnesses who testify or whose depositions are taken shall be paid the same fees for attendance and mileage paid in the United States district courts. Fees of the witness, the reporter and the person taking a deposition shall be paid by the party requesting attendance at a proceeding or deposition.

§ 308.11 Rules of evidence.

(a) *Evidence.* All parties shall have the right to present their case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(b) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds therefor. The record need not include argument on objections except as ordered, allowed, or requested by the administrative law judge. Rulings on such objections and on any other matters shall be a part of the record. Failure to object to the admission or exclusion of evidence or to any ruling shall be considered a waiver of the objection.

(c) *Official notice.* All matters officially noticed by the administrative law judge shall appear on the record.

§ 308.12 Motions.

(a) *In writing.* An application or request for an order or ruling not otherwise specifically provided for in this subpart shall be made by motion. Applications or requests shall be addressed to and filed with the administrative law judge prior to filing of the recommended decision with the Executive Secretary pursuant to § 308.13. At all other times, motions shall be addressed to and filed with the Executive Secretary. Motions may be made orally upon the record at a session of a hearing, unless the administrative law judge requires a written motion. All other motions shall be in writing. All written motions shall state with particularity the order or relief sought and the grounds therefor. All written motions and oppositions shall be accompanied by a form of proposed order.

(b) *Oppositions.* Within 10 days after service of any written motion, or within such other period of time fixed by the administrative law judge or the Executive Secretary, any party may file a written answer or opposition to the motion. The moving party shall not have a right to reply, except as permitted by the administrative law judge or the Executive Secretary. As a matter of discretion, the administrative law judge or the Executive Secretary may waive the requirements of this section as to motions for extensions of time, and may rule upon such motions ex parte.

(c) *Oral argument.* Oral argument shall not be heard on motions, except as directed by the administrative law judge or the Board of Directors. Supporting memoranda or briefs may be filed with motions or answers or oppositions thereto.

(d) *Rulings on motions.* The administrative law judge or the Executive Secretary shall rule upon all motions properly submitted in accordance with the provisions of this part, and upon such other motions as directed by the Board of Directors. If the administrative law judge or the Executive Secretary finds that a prompt decision by the Board on a motion is essential to the proper conduct of the proceeding, the motion may be referred to the Board for decision.

(e) *Appeal from rulings on motions.* All motions, answers, oppositions and rulings shall become part of the record. Rulings of an administrative law judge or the Executive Secretary on any motion may not be appealed to the Board of Directors prior to its consideration of the administrative law judge's recommended decision, findings and conclusions, except by special permission of the Board. Such rulings shall be considered by the Board in reviewing the record. Requests to the Board for special permission to appeal from such rulings shall be filed promptly in writing, and shall briefly state the grounds for the request. The moving party shall immediately serve a copy of the request on every other party to the proceeding.

(f) *Proceeding with hearing.* The hearing shall proceed pending the determination of any motion by the Board of Directors, unless otherwise ordered by the administrative law judge or the Board.

§ 308.13 Proposed findings and conclusions, supporting and reply briefs, and recommended decision.

(a) *Proposed findings and conclusions by parties.* After service of the notice by the administrative law judge that the record has been filed and transmitted as provided in § 308.07(h), each party to a hearing shall have 30 days to file with the administrative law judge proposed findings of fact, conclusions of law and a proposed order. For good cause, the administrative law judge may allow

additional time for filing. The proposals may be accompanied by a supporting brief or memorandum citing statutes, decisions, other authorities, and page references to the record. All proposals, briefs and memoranda shall become part of the record. Reply briefs may be filed within 15 days of service of initial briefs and shall be confined to matters in original briefs of opposing parties.

(b) *Recommended decision and filing of record.* Within 45 days after expiration of the time allowed for filing of proposed findings, conclusions and order by the parties, the administrative law judge shall file with the Executive Secretary and shall certify to the Board of Directors for decision, the record of the hearing. For good cause, the Board may extend the period for filing and certification. The record shall include a recommended decision, findings of fact, conclusions of law, and proposed order, the transcript, exhibits, exceptions, rulings, and briefs and memoranda filed in connection with the hearing. Upon request of any party, the record shall include exhibits excluded from evidence or tenders of proof. At the time of filing of the record with the Executive Secretary the administrative law judge shall serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order. The provisions of this paragraph shall not apply to a hearing before the Board of Directors.

§ 308.14 Exceptions to proposed findings and conclusions and recommended decision.

(a) *Filing.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order of the administrative law judge, a party may file with the Executive Secretary written exceptions thereto, exceptions to the failure of the administrative law judge to make any recommendation or finding or conclusion, exceptions to the admission or exclusion of evidence, and exceptions to any other rulings, subject to the provisions of this section. A supporting brief may also be filed. For good cause, the Executive Secretary may allow additional time for filing. A party who has not filed an answer in accordance with paragraphs (a) and (d) of § 308.06, or exceptions in accordance with § 308.76 may not file exceptions pursuant to this section.

(b) *Waiver.* Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed shall be a waiver of objection thereto.

(c) *Hearing before the Board of Directors.* The provisions of § 308.14 shall not apply to a hearing before the Board of Directors.

§ 308.15 Briefs in support of exceptions.

(a) *Contents.* All briefs in support of exceptions shall be confined to the particular matters in issue, citing statutes, decisions, other authorities, and page references to the record or recommended decision of the administrative law judge. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(b) *Late filing.* Briefs not filed on or before the time fixed in this subpart and documents not provided for in this subpart shall be received only with the special permission of the Board of Directors.

§ 308.16 Notice of submission to the Board of Directors.

The Executive Secretary shall submit the case to the Board after expiration of the time for filing exceptions and notify the parties that the case has been submitted to the Board of Directors for final decision.

§ 308.17 Oral argument before the Board of Directors.

(a) *Scheduling of Argument.* Upon the written request of a party or upon its own initiative, the Board of Directors may order an oral argument on the findings, conclusions and recommended decisions of the administrative law judge, when it considers justice will best be served thereby. The request must be made within the time prescribed for filing exceptions, and briefs in support of exceptions. The oral argument shall be before the Board or one or more members of the Board, and shall be recorded, unless otherwise ordered by the Board. Counsel will be notified of the exact time, date and place of the argument.

(b) *Order of Procedure.* Presentation of oral argument will be limited to a total of 45 minutes. Counsel for the respondent will open with a presentation limited to 20 minutes. Counsel for FDIC will follow with a presentation and response also limited to 20 minutes. Counsel for the respondent will then be given 5 minutes for a rebuttal. The Board may make adjustments to this schedule as it deems appropriate.

§ 308.18 Decision of the Board of Directors.

(a) *Decision and reopening of case.* The Board of Directors shall render its decision within 90 days after the Executive Secretary has notified the parties pursuant to § 308.17 that the case has been submitted to the Board for final decision. Within the 90-day period, the Board may order that the notice be set aside and the case reopened.

(b) *FDIC staff participation.* Appropriate members of the staff, who are not participating in the performance of investigative or prosecutorial functions in the particular case, or in a factually related case, may advise and assist the Board of Directors in the consideration of the particular case and in the preparation of documents for its disposition.

(c) *Copies.* The Executive Secretary shall furnish copies of the decision and order of the Board to the parties and to the bank concerned. Copies shall also be furnished to the appropriate State supervisory authority in the case of an insured nonmember bank, including a State branch of a foreign bank. Where the proceedings involve involuntary termination of the insured status of a State member bank, copies shall also be furnished to the Board of Governors of the Federal Reserve System. Where the proceedings involve involuntary termination of the insured status of a national bank, a District bank or a Federal branch of a foreign bank, copies shall also be furnished to the Comptroller of the Currency.

§ 308.19 Filing papers with the Executive Secretary.

(a) *Filing.* Papers required or permitted to be filed with the Board of Directors or the Executive Secretary, shall be filed with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429. The papers may be sent to the Executive Secretary by mail or express, but must be postmarked or received by the FDIC in Washington, D.C., within the prescribed time limit for filing.

(b) *Formal requirements.* All papers filed under this subpart shall be printed or typewritten, and copies shall be clear and legible. The original of all papers filed by a party not a natural person shall be signed by the party's duly authorized representative. Papers filed by a party who is a natural person shall be signed by the party or a duly authorized representative. The signer's address and telephone number must appear on the original. Counsel for the FDIC shall sign the original of all papers filed on behalf of the FDIC. All papers filed must name in the heading or on a title page, the party, the FDIC, the docket number and the subject of the papers.

(c) *Copies.* An original and four copies of all documents and papers required or permitted to be filed or served upon the Board of Directors or the Executive Secretary under this subpart (except the transcript of testimony and exhibits), shall be furnished to the Executive Secretary, unless otherwise specifically provided in the notice of hearing.

§ 308.20 Documents in proceedings confidential.

Unless otherwise ordered by the Board or required by law, the notice of hearing, the transcript, the recommended decision of the administrative law judge, exceptions thereto, proposed findings or conclusions, the findings and conclusions of the Board of Directors and other papers filed in connection with any hearing shall be for the confidential use of the Board, the administrative law judge or presiding officer, and appropriate supervisory authorities.

§ 308.21 Service of papers other than subpenas.

(a) *By the Board of Directors.* All documents or papers required to be served by the Board of Directors upon any party afforded a hearing shall be served by the Executive Secretary or the Board's designee. Service shall be made by personal service or by registered or certified mail, addressed to the last known address as shown on the records of the Board, of a party's attorney or representative of record. If there is no attorney or representative of record, service shall be made upon a party at the party's last known address as shown on the records of the Board. Service may also be made in such other manner reasonably calculated to give actual notice, as the Board may provide by regulation or otherwise. The foregoing provisions do not apply to service by the Board on counsel for the FDIC.

(b) *By the parties.* Except as otherwise expressly provided, a party filing papers in accordance with this subpart shall serve them upon the attorneys or representatives of record of all other parties to the proceeding, or upon such other parties if there is no attorney or representative. Service may be made by personal service or by registered, certified, or regular first class mail addressed to the last known address of such parties, or their attorneys or representatives of record. When filed with the Board of Directors or the administrative law judge, all papers shall show that service has been made.

§ 308.22 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this part, the date of the act or event or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday or Federal holiday, and intermediate Saturdays, Sundays and Federal holidays shall be included in the computation; however, when the period of time within which an act is to be performed is seven days or less, intermediate Saturdays, Sundays and Federal holidays shall not be included.

(b) *Service by mail.* Under this part, when a party has the right or is required to perform an act within a prescribed time period after the service by mail of any papers upon the party, three days shall be added to the prescribed time period for performance.

Subpart C—Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

§ 308.23 Scope.

Under the authority of section 8 of the Federal Deposit Insurance Act, the Board of Directors may terminate the insured status of an insured bank or an insured branch of a foreign bank upon the grounds set forth in section 8 and enumerated in § 308.24, § 308.26, and § 308.31. Hearings required to terminate insured status shall be conducted in accordance with the rules and procedures of subpart B and this subpart.

§ 308.24 Notice of finding grounds for termination of insurance.

The Board of Directors shall notify the Comptroller of the Currency in the case of a national bank or a District bank or an insured Federal branch of a foreign bank, and shall notify the appropriate supervisory authority in the case of an insured nonmember bank, including an insured State branch of a foreign bank, and shall notify the Board of Governors of the Federal Reserve System in the case of a State member bank, when the Board finds (a) that an insured bank (including a foreign bank having an insured branch) or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank, or (b) that such bank is in an unsafe or unsound condition to continue operations as an insured bank, or (c) that such bank or its directors or trustees have violated an applicable law, rule, regulation, order, or any condition imposed in writing by the FDIC in connection with the granting of any application or other request by the bank, or have violated any written agreement entered into with the FDIC. The appropriate supervisory authorities shall be notified for the purpose of securing correction of the practices or violations of a bank or its directors or trustees, or of the condition of the bank. The Board shall furnish a copy of the notice to the bank.

§ 308.25 Extraterritorial acts of foreign banks or their directors or trustees.

An act or practice committed outside the United States by a foreign bank or its directors or trustees, which act or practice in and of itself would otherwise be a ground for termination of the insured status of a branch of the foreign bank under this subpart, shall be a ground for such termination only if the Board of Directors finds either that: (a) The act or practice has been, is, or is likely to be a cause of or carried on in connection with or in furtherance of, an act or practice committed within any State of the United States or the District of Columbia that in and of itself would be an appropriate basis for action by the FDIC, or (b) the act or practice committed outside the United States, if proven, would adversely affect the insurance risk of the FDIC.

§ 308.26 Failure of a foreign bank to secure removal of personnel.

When any person associated with a foreign bank fails to appear promptly as a party to a proceeding pursuant to § 308.40 or § 308.44 for removal or suspension of that person, or fails to comply with an effective order or judgment issued in such proceeding, any failure by the bank to secure that person's removal from office and preclude the person from further participation in the conduct of the affairs of the bank, shall be a ground for termination of insurance of deposits in any branch of the bank.

§ 308.27 Notice of intention to terminate insured status and hearing.

(a) *Notice and period of correction.* Unless correction of the practices, condition or violations specified in the notice issued pursuant to § 308.24 is made within 120 days of service of the notice, or a specified period of correction of not less than 20 days, the Board of Directors, if it determines to proceed further, shall give the bank or insured branch of a foreign bank not

less than 30 days written notice of its intention to terminate insured status. The period of correction of not less than 20 days shall be fixed by the Board in any case where the Board in its discretion has determined that the insurance risk of the FDIC is unduly jeopardized, or fixed by the Comptroller of the Currency in the case of a national bank, or a District bank or an insured Federal branch of a foreign bank, or fixed by the State authority in the case of an insured nonmember bank, including an insured State branch of a foreign bank, or fixed by the Board of Governors of the Federal Reserve System in the case of a State member bank.

(b) *Hearing.* The notice shall fix a time and place for a hearing on the proposed termination of insurance, before an administrative law judge selected by the Office of Personnel Management. The rules and procedures of subpart B of this part and the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) shall apply. After consideration of the record made at the hearing, the Board shall make written findings which shall be conclusive.

§ 308.28 Order terminating insured status.

If the Board of Directors finds that any unsafe or unsound practice or condition, or violation specified in the notice issued pursuant to § 308.24 has been established and has not been corrected within the time prescribed in § 308.27(a), the Board may order that the insured status of the bank or branch be terminated on a subsequent date not earlier than the expiration of the time period specified in the notice of intention issued pursuant to § 308.27(a).

§ 308.29 Consent to termination of insured status.

If the bank does not appear by a duly authorized representative at the hearing pursuant to § 308.27(b), the bank shall be deemed to have consented to termination of the insured status of the bank or branch. The administrative law judge shall promptly report this failure to appear to the Board of Directors. The Board may then issue an order terminating the insured status of the bank or branch.

§ 308.30 Notice to depositors of termination of insured status.

Within the time specified by the Board of Directors and prior to the date of termination of the insured status of a bank or branch, the bank shall mail a notice of termination of insured status to each depositor at the depositor's last address of record on the books of the bank or branch. The bank shall publish the notice in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notice shall be as follows:

Notice

(Date) ————————.

1. The status of the ————————, as an (insured bank) (insured branch) under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the ——day of ————, 19—;

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation;

3. Insured deposits in the (bank) (branch) on the ——day of ————, 19— will continue to be insured, as provided by the Federal Deposit Insurance Act, for 2 years after the close of business on the ——day of ————, 19—: Provided, however, that any withdrawals after the close of business on the ——day of ————, 19—, will reduce the insurance coverage by the amount of such withdrawals.

(Name of bank or branch)

(Address)

The notice may include any additional information the bank deems advisable.

§ 308.31 Termination of insured status of bank not engaged in the business of receiving deposits, other than trust funds.

(a) *Notice to show cause.* When the Board of Directors has evidence that an insured nonmember bank or an insured bank is not engaged in the business of receiving deposits, other than trust funds, the Board shall give written notice of this to the bank and shall direct the bank to show cause why its insured status should not be terminated under the provisions of section 8(p) of the Federal Deposit Insurance Act. The bank shall have 30 days after receipt of the notice, or such longer period prescribed by the Board, to submit affidavits or other written proof that it is engaged in the business of receiving deposits, other than trust funds.

(b) *Hearing and notice of termination date.* Upon written request of the bank, the Board shall authorize a hearing before an administrative law judge selected by the Office of Personnel Management. The rules and procedures of subpart B of this part and the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) shall apply to the hearing. If, upon consideration of the record made at the hearing, the Board finds that the bank is not engaged in the business of receiving deposits, other than trust funds, the finding shall be conclusive and the Board shall notify the bank that its insured status will terminate at the expiration of the first full semiannual assessment period following issuance of the notice.

(c) *Notice to depositors of termination of insured status.* Within the time specified by the Board and prior to the date of termination of its insured status, the bank shall mail a notice of termination of insured status to each depositor at the depositor's last address of record on the books of the bank. The bank shall publish the notice in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notice shall be as follows:

Notice

(Date) ————————.

The status of the ———————— as an (insured bank) (insured branch) under the Federal Deposit Insurance Act, will terminate on the ——day of ————, 19—, and its deposits will thereupon cease to be insured.

(Name of bank or branch)

(Address)

The notice may include any additional information the bank deems advisable.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

§ 308.32 Scope.

(a) The rules and procedures of subpart B and this subpart apply to proceedings by the Board of Directors to order an insured nonmember bank or its official to cease and desist from practices and violations described in section 8 of the Federal Deposit Insurance Act and enumerated in § 308.33.

(b) The rules and procedures of subpart B and this subpart apply to proceedings by the Board of Directors to order a municipal securities dealer or a person associated with the municipal securities dealer to cease and desist from any violation of law or regulation specified in section 15B(c)(5) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o–4(c)(5)), where the municipal securities dealer is an insured nonmember bank as defined in § 308.01, a subsidiary or department or division thereof.

(c) The rules and procedures of subpart B and this subpart apply to proceedings by the Board of Directors to order a clearing agency or transfer agent to cease and desist from failure to comply with the applicable provisions of section 17, 17A, and 19 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q, 78q–1, 78s), and the applicable rules and regulations thereunder, where the clearing agency

or transfer agent is an insured nonmember bank as defined in § 308.01, or a subsidiary thereof.

§ 308.33 Grounds for cease-and-desist orders.

The Board of Directors may issue and serve upon any insured nonmember bank or its official a written notice of charges and of hearing as specified in § 308.35, if (a) in the Board's opinion the bank or official is engaging or has engaged in an unsafe or unsound practice, or (b) the Board has reasonable cause to believe the bank or official is about to engage in an unsafe or unsound practice or (c) in the Board's opinion the bank or official has violated or the Board has reasonable cause to believe that the bank or official is about to violate a law, rule or regulation, or any condition the Board has imposed in writing in connection with granting an application or request of the bank, or any written agreement with the FDIC.

§ 308.34 Notice to State supervisory authority.

The Board of Directors shall give the appropriate State supervisory authority timely notice of its intent to institute a proceeding pursuant to subpart D, and the grounds therefor. The proceeding shall be conducted according to subpart D, unless within the time period specified in the notice pursuant to § 308.35, the State supervisory authority has effected satisfactory corrective action.

§ 308.35 Notice of charges and of hearing, and consent.

The notice issued pursuant to § 308.33 shall contain a statement of the facts constituting any alleged violation or unsafe or unsound practice, and shall fix a time and place for a hearing to determine whether an order to cease and desist should issue against the bank or its official. The hearing shall be not earlier than 30 days nor later than 60 days after service of the notice, unless an earlier or later date is set by the Board of Directors in its discretion at the request of any party served with the notice. If such party does not appear at the hearing personally or by a duly authorized representative, the party will be deemed to have consented to issuance of the cease-and-desist order.

§ 308.36 Issuance and effective date of cease-and-desist order.

(a) *Issuance.* Upon consent, or if upon the record made at any hearing referred to in § 308.35, the Board of Directors finds that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and cause to be served upon the bank or its official, an order to cease and desist from any such violation or practice and to take affirmative action to correct any conditions resulting therefrom.

(b) *Effective date.* A cease-and-desist order shall become effective at the expiration of 30 days after the service of the order upon the bank or its official. A cease-and-desist order issued upon consent shall become effective at the time specified therein. All cease-and-desist orders shall remain effective and enforceable, except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors or a reviewing court.

§ 308.37 Issuance and effective date of temporary cease-and-desist order.

(a) *Issuance.* When the Board of Directors determines that the violation, threatened violation or the unsafe or unsound practice (or the continuation of any of the foregoing) as specified in the notice of charges pursuant to § 308.35, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to weaken seriously the condition of the bank or otherwise to prejudice seriously the interests of its depositors prior to the completion of the proceedings pursuant to section 8(b) of the Federal Deposit Insurance Act and § 308.35, the Board may issue a temporary order requiring the bank or its official to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of the proceedings.

(b) *Effective date.* A temporary order shall become effective when served upon the bank or its official. Unless the order is set aside, limited or suspended by a court in proceedings authorized under the Federal Deposit Insurance Act, it shall remain effective and enforceable pending completion of administrative proceedings pursuant to the notice of charges issued under § 308.35 and until the Board of Directors dismisses the charges.

§ 308.38 Extraterritorial acts of foreign banks or their officials.

An act or practice committed outside the United States by a foreign bank or its official that would otherwise be a ground for issuing a cease-and-desist order under § 308.36, or a temporary cease-and-desist order under § 308.37, shall be a ground for an order only if the Board of Directors finds either that (a) the act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any State of the United States or the District of Columbia which act or practice in and of itself would be an appropriate basis for action by the FDIC, or (b) the act or practice, if proven, would adversely affect the insurance risk of the FDIC.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders

§ 308.39 Scope.

The rules and procedures of subpart B and this subpart apply to proceedings by the Board of Directors to remove or suspend directors or officers of an insured nonmember bank or any other person participating in the conduct of the affairs of such bank, or proceedings to prohibit such director, officer or other person from further participation in the conduct of the affairs of such bank, upon the grounds set forth in section 8(e) of the Federal Deposit Insurance Act and enumerated in this subpart. The rules and procedures of this subpart and subpart B do not apply to suspension, removal, or prohibition proceedings upon the grounds set forth in section 8(g) of the Federal Deposit Insurance Act and enumerated in subpart G.

§ 308.40 Grounds for removal or prohibition.

(a) The Board of Directors may issue and serve upon a director or officer of any insured nonmember bank a written notice of its intention to remove the individual from office when the Board determines that (1) the individual has committed a violation of law, rule, regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has engaged in any act or omission or practice constituting a breach of fiduciary duty as a director or officer; and (2) the bank has suffered or will probably suffer substantial financial loss or other damage, or that the interests of its depositors could be seriously prejudiced by the violation or practice or breach of fiduciary duty, or that the director or officer has received financial gain by reason of the violation or practice or breach of fiduciary duty. The violation, practice, or breach of fiduciary duty must be one that involves personal dishonesty on the part of the individual, or that demonstrates the individual's willful or continuing disregard for the safety or soundness of the bank.

(b) The Board may issue and serve a written notice of its intention to remove any director or officer or an insured nonmember bank from office when the

Board determines that the individual by conduct or practice with respect to another insured bank or other business institution that resulted in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for its safety or soundness, and, in addition, has evidenced unfitness to continue as a director or officer.

(c) The Board may issue and serve upon any other person participating in the conduct of the affairs of an insured nonmember bank a written notice of its intention to prohibit the individual's further participation in the conduct of the affairs of the bank when the Board determines that the individual by conduct or practice with respect to such bank or other insured bank or other business institution that resulted in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for the safety or soundness of such insured bank and has evidenced unfitness to participate in the conduct of the affairs of such insured bank.

§ 308.41 Notice to State supervisory authority.

The Board of Directors shall give the appropriate State supervisory authority timely notice of its intent to institute a proceeding pursuant to subpart E, and the grounds therefor. The proceeding shall be conducted according to subpart E unless within the time specified in the notice pursuant to § 308.42, the State supervisory authority has effected satisfactory corrective action.

§ 308.42 Notice of intention to remove, hearing and consent.

A written notice issued pursuant to § 308.40 shall be served upon the director, officer or other person named therein, and a copy shall be served upon the bank concerned. The notice shall state the facts constituting the grounds for removal or prohibition and shall fix a time and place for a hearing. The hearing shall not be earlier than 30 days nor later than 60 days after the date of service of the notice, unless an earlier or a later date is set by the Board of Directors at the request of (a) the director or officer or other person, and for good cause shown, or (b) the Attorney General of the United States. Failure of the individual to appear at the hearing in person or by a duly authorized representative shall be deemed a consent to issuance of an order of removal or prohibition.

§ 308.43 Issuance and effective date of removal or prohibition order.

When the Board of Directors finds upon the record made at a hearing referred to in § 308.42 that any of the grounds specified in the notice have been established, the Board may issue orders of removal or prohibition that shall become effective at the expiration of 30 days after the date of service of the order upon the individual and the bank. A consent order issued by the Board in accordance with § 308.42 shall become effective at the time specified therein. All orders shall remain effective and enforceable except to the extent they are stayed, modified, terminated or set aside by the Board or a reviewing court.

§ 308.44 Grounds for suspension or prohibition.

The Board of Directors may suspend from office or prohibit from further participation in the conduct of the affairs of an insured nonmember bank, a director or officer of such bank or any other person participating in the conduct of the affairs of such bank, as referred to in § 308.40, when the Board deems it necessary for the protection of the bank or the interests of its depositors.

§ 308.45 Issuance and effective date of suspension or prohibition order.

(a) *Notice of suspension or prohibition.* Notice of suspension or prohibition shall be given by written order accompanying a notice issued pursuant to § 308.42, and setting forth the grounds for the suspension or prohibition as specified in § 308.44. The order shall be served upon the officer, director, or other person participating in the conduct of the affairs of the bank, and a copy shall be served upon the bank.

(b) *Effective date.* A suspension or prohibition shall become effective upon service of the order of suspension or prohibition and unless stayed by a court in proceedings authorized by the Federal Deposit Insurance Act, the order shall remain in effect pending completion of the administrative proceedings pursuant to the notice served under § 308.42 and until the Board of Directors dismisses the charges specified in such notice.

§ 308.46 Extraterritorial acts of officials of foreign banks.

An act or practice committed outside the United States by a director or officer of a foreign bank or by any other person participating in the conduct of the affairs of a foreign bank, that would otherwise be a ground for suspension, removal, or prohibition proceedings under this subpart, shall be a ground for such proceedings only if the Board of Directors finds that (a) the act or practice has been, is, or is likely to be a cause of or carried on in connection with or in furtherance of an act or practice within any State of the United States or the District of Columbia which act or practice in and of itself would be an appropriate basis for action by the FDIC, or (b) the act or practice, if proven, would adversely affect the insurance risk of the FDIC.

Subpart F—Procedures Applicable to Proceedings Pursuant to Section 10(c) of the Federal Deposit Insurance Act

§ 308.47 Scope.

The procedures in this subpart shall be followed in proceedings pursuant to section 10(c) of the Federal Deposit Insurance Act, conducted in connection with examinations or investigations of banks.

§ 308.48 Order to conduct proceedings.

A proceeding pursuant to section 10(c) shall be initiated only upon issuance of an order by the Board of Directors, the General Counsel or designee thereof, or the Director of the Division of Bank Supervision or designee thereof. The order shall designate a presiding officer as the FDIC's representative to conduct such proceedings. Upon application and for good cause shown, the Board or the person issuing the order may limit, quash, modify or withdraw the order.

§ 308.49 Powers of presiding officer.

The presiding officer in a section 10(c) proceeding shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpenas and subpenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank is located or in which the witness resides or conducts business. The Board or a person issuing the order initiating the proceeding may limit, quash, or modify any subpena or subpena duces tecum, upon application and for good cause shown. The presiding officer shall report to the Board of Directors any instance where any person has been guilty of dilatory, obstructionist, or contumacious conduct during the proceeding, or any other instance involving a violation of these rules. The Board shall thereupon take such action as the circumstances warrant, and in addition may exclude the person from further participation in the proceeding.

§ 308.50 Proceedings confidential.

Proceedings pursuant to section 10(c) shall be confidential unless otherwise provided by § 308.51(c). Information or documents obtained by the FDIC in the course of such proceedings shall be disclosed in accordance with Part 309 of the FDIC's rules and regulations, and as otherwise required by law.

§ 308.51 Rights of witnesses.

In a proceeding pursuant to section 10(c):

(a) Any person compelled or requested to furnish testimony, documentary evidence, or other information, shall upon request be shown the order initiating the proceeding. At the discretion of the presiding officer, a copy of the order may be furnished to such person;

(b) Any person compelled, requested or permitted to appear and testify has the right to be accompanied, represented and advised by counsel. While testifying, such person may have counsel present who may (1) advise the witness before, during and after such testimony; (2) briefly question the witness at the conclusion of such testimony for clarification of answers; (3) make summary notes during such testimony solely for the use of the witness;

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the presiding officer;

(d) If the record developed in the course of the proceeding contains allegations of wrongdoing by any person with respect to the affairs or ownership of any bank, such person shall be advised of the alleged wrongdoing and shall be afforded a reasonable opportunity, consistent with administrative efficiency, to produce rebuttal evidence in documentary form (including depositions and statements under oath), or in the form of testimony given before the presiding officer. The evidence shall be on the record;

(e) Witness fees shall be paid in accordance with § 308.10.

§ 308.52 Service of subpena.

Service of a subpena shall be in accordance with § 308.08(c).

§ 308.53 Transcripts.

Transcripts of testimony, if any, in a proceeding pursuant to section 10(c) shall be recorded by the official reporter, or by any other person or means designated by the presiding officer. A person submitting documentary evidence or testimony may obtain a copy of the transcript, if any, upon payment of the cost thereof.

§ 308.54 Special examinations and examinations of closed banks.

Procedures in this subpart shall be followed when proceedings pursuant to section 10(c) are instituted in connection with the special examination of any State member bank, any national or District bank, any insured Federal branch of a foreign bank, or the examination of any closed insured bank or branch, or the examination of an affiliate of any of the foregoing.

Subpart G—Procedures and Standards Applicable to Suspension, Removal and Prohibition Where Felony Charged, and Petition for Reconsideration of Denial of an Application Under Section 19 of the Federal Deposit Insurance Act

§ 308.55 Scope.

The rules and procedures set forth in this subpart apply to proceedings by the Board of Directors (a) to suspend any director or officer of an insured nonmember bank or any other person participating in the conduct of the affairs of such a bank, or to prohibit such individuals from further participation in the conduct of the affairs of the bank where the individual is charged in any State, Federal or territorial information or indictment, or charged in any complaint authorized by a United States attorney, with the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under State or Federal law; (b) to remove from office any such director or officer or other person, or to prohibit such individuals from further participation in the conduct of the affairs of the bank, except with the consent of the Board, where a judgment of conviction not subject to further appellate review has been entered against the individual for the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under State or Federal law; and (c) to consider a petition for reconsideration of a denial of an application by an insured bank under section 19 of the Federal Deposit Insurance Act (hereafter in this subpart "section 19") to engage the services of an individual who has been convicted of any criminal offense involving dishonesty or a breach of trust.

§ 308.56 Relevant considerations.

(a) In deciding whether to suspend, remove or prohibit under this subpart, the Board of Directors shall consider (1) whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under State or Federal law, and which involves dishonesty or breach of trust; and (2) whether the presence of the individual in a position with an insured bank may pose a threat to the interest of the bank's depositors or may threaten to impair public confidence in the bank. The Board of Directors may consider additional factors in the specific case that appear relevant to its decision to continue in effect, rescind, terminate or modify a suspension, removal or prohibition order. The Board shall not consider the guilt or innocence of the individual charged with the crime.

(b) In proceedings for reconsideration of a denial of an application under section 19, the Board of Directors shall consider: (1) Whether the conviction is for a criminal offense, either misdemeanor or felony, involving dishonesty or breach of trust; (2) whether service of the individual to the bank constitutes a significant threat to the safety and soundness of the applicant bank or the interests of its depositors, or may threaten to impair public confidence in the bank; (3) evidence of the affected individual's rehabilitation; (4) the position to be held by the affected individual; and (5) applicable fidelity bond coverage for the affected individual. In evaluating these factors, significant weight will be given to the judgment of the applicant bank's boards of directors and bonding company, provided the judgments are made at arm's length.

§ 308.57 Notice of suspension or prohibition.

Proceedings by the Board of Directors to suspend an individual from office or prohibit further participation in the conduct of the affairs of the bank as referred to in § 308.55(a), shall be initiated by written notice of suspension or prohibition served on the individual, upon prior determination by the Board that the offense alleged in the information or indictment or complaint involved dishonesty or breach of trust, and that the individual's participation in the conduct of the affairs of the bank may pose a threat to the bank's depositors or may threaten to impair public confidence in the bank. The suspension or prohibition shall remain in effect until final disposition of the information or indictment or complaint, and until the Board terminates the suspension or prohibition. A copy of the notice shall be served upon the bank concerned.

§ 308.58 Order of removal or prohibition.

When a final judgment of conviction not subject to further appellate review is entered against a director or officer of an insured nonmember bank or any other person participating in the conduct of the affairs of such bank for a crime referred to in § 308.55(b), the Board of Directors may issue and serve upon the individual an order removing the individual from office or prohibiting further participation in the conduct of the affairs of the bank except with the Board's consent where continued service or participation by the director, officer, or other person may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank. A copy of the order shall be served upon the bank, at which time the director or officer named in the order shall be removed from office. The order shall remain effective until completion of the hearing or appeal authorized under section 8(g) of the Federal Deposit Insurance Act and this subpart, unless the order is terminated by the Board. A finding of not guilty or other disposition of the case will not preclude the Board from thereafter instituting proceedings to remove an individual from office or prohibit further participation in the conduct of the affairs of the bank, pursuant to section 8(e) of the Federal Deposit Insurance Act and subpart E.

§ 308.59 Notice of opportunity and request for hearing.

A notice pursuant to § 308.57, an order pursuant to § 308.58 and a denial of an application under section 19 shall be accompanied by (a) a statement that within 15 days of receipt of such notice or order, the individual or, in the case of a section 19 denial, the affected individual or the bank may file with the Executive Secretary a written request for a hearing stating the relief desired and the grounds therefor and that is accompanied by supporting evidence when available; and (b) a description of the hearing procedure and relevant considerations specified in § 308.56.

§ 308.60 Waiver of hearing.

Failure to request a hearing pursuant to § 308.59 shall constitute a waiver of the opportunity of hearing. Failure to appear at a hearing in person, through an authorized bank officer, through counsel, or personally with counsel shall constitute a waiver of hearing. The individual or, in the case of a section 19 denial, the affected individual or the bank may in writing waive a hearing and elect to have the matter determined by the Board of Directors on the basis of written submissions.

§ 308.61 Hearing.

(a) The Executive Secretary shall order a hearing to commence within 30 days after receipt of a request for hearing pursuant to § 308.59, except in the case of a petition for reconsideration of denial of a section 19 application, for which the time periods set forth in § 303.10(e) shall apply. The hearing shall be held in Washington, D.C., or at another designated place, before a presiding officer designated by the Board of Directors. The Board may order a later hearing date upon petition of the individual or, in the case of a section 19 denial, the affected individual or the bank afforded the hearing.

(b) The provisions of § 308.04, § 308.05, § 308.20 and § 308.22 apply to proceedings conducted under this subpart, except as otherwise specifically provided. The formal rules of evidence and the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554–557) shall not apply to the hearing.

(c) The individual or, in the case of a section 19 denial, the affected individual or the bank may appear at the hearing personally, through an authorized bank officer, through counsel, or personally with counsel, and shall have the right to introduce relevant and material documents and to present oral argument.

(d) Staff members of the FDIC's Office of the General Counsel may attend the hearing and participate as a party.

(e) The proceedings shall be recorded and a transcript shall be furnished to the individual or, in the case of a section 19 denial, the affected individual or the bank afforded the hearing upon request and after payment of the cost thereof. At the discretion of the presiding officer witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party.

(f) In the course of, or in connection with any proceeding under this subpart, the Board of Directors or the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any State, territory or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.10. The Board or the presiding officer may require the production of documents from any such State, territory, or other place subject to the jurisdiction of the United States.

(g) Upon the request of the individual or, in the case of a section 19 denial, the affected individual or the bank afforded the hearing or the staff members of the FDIC's Office of the General Counsel, the record shall remain open for 5 business days following the hearing for the parties to make additional submissions to the record. The record shall thereafter be closed.

(h) The presiding officer shall make recommendations to the Board, where possible, within 10 days after the record is closed.

§ 308.62 Decision of the Board of Directors.

Within 60 days following the hearing or receipt of written submissions pursuant to § 308.60, the Board of Directors shall notify the individual or, in the case of a section 19 denial, the affected individual and the bank whether the suspension or prohibition or denial will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition or denial will be rescinded or otherwise modified. The notification shall state the basis for any decision of the Board adverse to the individual or, in the case of a section 19 denial, the affected individual and the bank. The Board shall promptly rescind or modify an order of removal or prohibition or denial where the decision is favorable to the individual or, in the case of a section 19 denial, the affected individual and the bank.

§ 308.63 Reconsideration by the Board of Directors.

The individual, except for the affected individual or the bank in the case of a section 19 denial, afforded a hearing pursuant to § 308.61 shall have 10 days following receipt of the decision of the Board of Directors to petition the Board for reconsideration. The individual or, in the case of a section 19 denial, the affected individual or the bank shall be entitled to petition the Board for reconsideration of its decision after the expiration of 12 months from the date of the Board's decision. A petition shall state with particularity the basis for reconsideration, the relief sought, and any exceptions to the findings of the Board. It may be accompanied by a supporting memorandum and by other documentation. Promptly following

receipt of the petition for reconsideration, the Board shall determine whether to grant a hearing.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders or Certain Federal Statutes

§ 308.64 Scope.

(a) The rules and procedures in this subpart and subpart B apply to proceedings by the Board of Directors to assess and collect civil penalties from (1) an insured nonmember bank or its official (as defined in § 308.02(l)) where the bank or official has violated the terms of any cease-and-desist order which has become final, or (2) an insured nonmember bank or its official where the bank or official has violated the provisions of section 22(h) or 23A of the Federal Reserve Act (as made applicable by section 18(j) of the Federal Deposit Insurance Act), or (3) the provisions of section 106(b)(2) of the Bank Holding Company Act Amendments of 1970, as amended.

(b) As used in § 308.65, § 308.66, and § 308.67, the term "has violated" includes, but is not limited to, any action (alone or with another) for or towards causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 308.65 Violation of order as ground for assessment.

If, in the opinion of the Board of Directors, an insured nonmember bank or its official has violated any final order issued pursuant to section 8(b) or 8(c) of the Federal Deposit Insurance Act and subpart D, the Board may assess upon the bank or official a civil penalty of not more than $1,000 per day for each day the violation continues.

§ 308.66 Violation of laws limiting dealings with bank officials and affiliates as ground for assessment.

If, in the opinion of the Board of Directors, an insured nonmember bank or its official has violated any provision of section 22(h) or 23A of the Federal Reserve Act, as amended (made applicable by section 18(j) of the Federal Deposit Insurance Act), or has violated any lawful regulation issued pursuant thereto, the Board may assess upon the bank or official a civil penalty of not more than $1,000 per day for each day the violation continues.

§ 308.67 Violation of law governing correspondent accounts as ground for assessment.

If, in the opinion of the Board of Directors, an insured nonmember bank or its official has violated any provision of section 106(b)(2) of the Bank Holding Company Act Amendments of 1970, as amended, the Board may assess upon the bank or official a civil penalty of not more than $1,000 per day for each day the violation continues.

§ 308.68 Relevant considerations.

In determining the amount of the penalty assessed pursuant to § 308.65, § 308.66, or § 308.67, the Board of Directors shall consider the financial resources and good faith of the insured nonmember bank or its official, the gravity of the violation, any previous violations, and such other matters as justice may require.

§ 308.69 Notice of assessment of civil penalty, and opportunity and request for hearing.

(a) Civil penalties pursuant to § 308.65, § 308.66, or § 308.67 shall be assessed by written notice served upon the bank or official. The notice shall state the amount of the penalty, the period for payment, the legal authority for assessment, and the matters of fact or law constituting the grounds for assessment.

(b) The notice shall further indicate that within 10 days of receipt of the notice, the individual assessed may file with the Executive Secretary or other designee of the Board of Directors a written request for a hearing. A description of the hearing procedure shall accompany the notice.

(c) The notice shall be delivered by personal service, by registered or certified mail, or by other appropriate means, to the last known address of the party assessed.

§ 308.70 Waiver of hearing.

Failure to request a hearing pursuant to § 308.69(b) shall constitute a waiver of the opportunity of hearing and the notice of assessment pursuant to § 308.69(a) shall constitute a final and unappealable order.

§ 308.71 Hearing and order.

The Executive Secretary or designee of the Board of Directors shall order a hearing to commence within 60 days after receipt of a request for a hearing pursuant to § 308.69(b). The provisions of the Administrative Procedure Act (5 U.S.C. 554–557) and subpart B shall apply to the hearing. If, upon the record made at the hearing, the Board finds that the grounds for assessing the civil penalty have been established, the Board shall issue its final order and cause it to be served upon the party. The final order shall require payment of the penalty, as specified in the notice of assessment, or the Board, in its discretion, may reduce the amount of the penalty.

§ 308.72 Payment of civil penalty.

Civil penalties assessed pursuant to § 308.65, § 308.66, or § 308.67 are payable and to be collected within the 60-day period after issuance of the notice of assessment, unless the Board of Directors shortens the period for payment or makes the amount payable upon receipt of the notice, where the Board determines the purpose of the penalty would be better served thereby. Notwithstanding any other provision of this subpart, if a party has requested a hearing pursuant to § 308.69(b) to challenge a penalty or an antecedent finding, the party shall not be required to pay the penalty until the Board has issued a final order following the hearing. Checks in payment of civil penalties shall be forwarded to the Division of Accounting and Corporate Services, Federal Deposit Insurance Corporation, and made payable to the Treasurer of the United States. The Office of the Director of Accounting and Corporate Services shall prepare a receipt and notify the Executive Secretary who shall close the record on the case.

Subpart I—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

§ 308.73 Scope.

The rules and procedures in this subpart and subpart B apply to proceedings by the Board of Directors in connection with the disapproval by the Board of a proposed acquisition of control of an insured nonmember bank.

§ 308.74 Grounds for disapproval.

The following are grounds for disapproval of a proposed acquisition of control:

(a) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the banking business in any part of the United States;

(b) The effect of the proposed acquisition of control in any part of the United States would be to substantially lessen competition or tend to create a monopoly or would in any other manner be in restraint of trade, and anticompetitive effects of the proposed acquisition of control are not clearly

outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) The financial condition of any acquiring person might jeopardize the financial stability of the bank or prejudice the interest of the depositors of the bank;

(d) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank; or

(e) Any acquiring person neglects, fails, or refuses to furnish to the FDIC all the information required by it.

§ 308.75 Notice of disapproval and opportunity and request for hearing.

(a) Within 3 days of its decision to disapprove a proposed acquisition of control of an insured nonmember bank, the Board of Directors shall serve a written notice of disapproval upon the party seeking to acquire control. The notice shall state the legal authority and the basis for the disapproval.

(b) The notice shall further indicate that within 10 days of receipt the individual may file with the Executive Secretary a written request for a hearing. A description of the hearing procedure shall accompany the notice.

(c) The notice shall be delivered by personal service, by registered or certified mail, or by other appropriate means to the last known address of the party being afforded the notice.

(d) Failure to request a hearing pursuant to this section shall constitute a waiver of the opportunity of hearing and the notice of disapproval shall constitute a final and unappealable order.

§ 308.76 Exceptions.

(a) *Filing.* The Board of Directors may direct the party requesting a hearing pursuant to § 308.75(b) or the party may elect to file exceptions to the statement of the basis for disapproval contained in the notice of disapproval. Exceptions shall be filled with the Executive Secretary within 20 days after receipt of the notice by the party, unless the Board specifies a different filing period of not less than 10 days after receipt of the notice. For good cause shown, the Executive Secretary or the administrative law judge may permit filing of exceptions after expiration of the filing period.

(b) *Requirements.* Exceptions filed under this section to a statement of the basis for disapproval of a proposed acquisition of control shall specifically designate the part of the statement to which exception is taken. Only those parts of a statement of the basis for disapproval so designated may be challenged by the party at the hearing.

(c) *Effect of failure to except.* Failure of a party to timely file required exceptions to a statement of the basis for disapproval of a proposed acquisition of control shall be deemed a waiver of the party's right to appear and contest the disapproval and shall authorize the administrative law judge to conduct the hearing without further notice to that party. If every party has waived the right to appear in a disapproval proceeding, the administrative law judge is authorized to recommend to the Board that it dispense with further proceedings.

§ 308.77 Hearing and order.

The Executive Secretary shall order a hearing to commence within 60 days after receipt of a request for hearing pursuant to § 308.75(b). If the appropriate State bank supervisory agency has submitted views and recommendations on the proposed acquisition, it shall be entitled as of right to appear as a party. The provisions of the Administrative Procedure Act (5 U.S.C. 554–557) and subpart B shall apply to the hearing. If, upon the record made at the hearing, and after giving due considerations to any views or recommendations previously submitted by an appropriate State bank supervisory agency, the Board of Directors finds that there are adequate grounds for approving or disapproving the acquisition, the Board shall issue its final order approving or disapproving the acquisition and cause it to be served on the party seeking control.

Subpart J—Rules and Procedures Applicable to Proceedings Relating to Assessment of Civil Penalties for Willful Violation of the Change in Bank Control Act

§ 308.78 Scope.

The rules and procedures of this subpart apply to proceedings by the Board of Directors to assess civil penalties against any person for willful violation of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) or any regulation or order issued pursuant thereto, in connection with the affairs of an insured nonmember bank.

§ 308.79 Notice of intention to assess civil penalty and opportunity and request for hearing.

(a) If, in the opinion of the Board of Directors, any person has willfully violated the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) or any regulation or order issued pursuant thereto, in connection with the affairs of an insured nonmember bank, the Board may cause notice to be served upon the person of its intention to assess a civil penalty of not more than $10,000 per day for each day the violation continues. The notice shall state the legal authority and grounds for assessment and the amount of the penalty.

(b) The notice shall further state that within 10 days of receipt of the notice the individual may file with the Executive Secretary a written request for a hearing. A description of the hearing procedure shall accompany the notice.

(c) The notice shall be delivered by personal service, by registered or certified mail, or by other appropriate means, to the last known address of the person assessed.

§ 308.80 Waiver of hearing.

Failure to request a hearing pursuant to § 308.79(b) shall constitute a waiver of the opportunity for hearing. The Board of Directors, for good cause shown, may extend the period to request a hearing. A party may in writing waive a hearing and elect to have the propriety of the penalty determined by the Board solely on the basis of written submissions.

308.81 Hearing.

The Executive Secretary shall order a hearing to commence within 30 days after receipt of a request for a hearing pursuant to § 308.79(b), in Washington, D.C., or another place designated by the Executive Secretary, before a presiding officer designated by the Board of Directors. The provisions of § 308.61 (b), (c), (d), (e), and (g) shall apply to the hearing.

§ 308.82 Assessment.

If, after considering the data, views, and arguments presented at the hearing pursuant to § 308.81, or any written submissions made pursuant to § 308.80, and the gravity of the violation and the financial resources and good faith of the party, the Board concludes that a civil penalty is warranted, it shall assess against the party a penalty of not more than $10,000 per day for each day the violation continues. Based upon the same consideration, the Board, in its discretion, may reduce the penalty from the amount stated in the notice of intention. The Board shall cause a final order of assessment to be served upon the party.

§ 308.83 Collection.

The FDIC may collect the civil penalty assessed pursuant to § 308.82 by agreement with the party, or the FDIC may bring an action against the party to recover the penalty amount in the appropriate United States District Court.

Subpart K—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them, and Upon Clearing Agencies or Transfer Agents

§ 308.84 Scope.

The rules and procedures in this subpart and subpart B apply to proceedings by the Board of Directors (a) to censure, limit the activities of, suspend, or revoke the registration of, any municipal securities dealer for which the FDIC is the appropriate regulatory agency; and (b) to censure, or suspend or bar from being associated with such a municipal securities dealer, any person associated with such a municipal securities dealer; and (c) to deny registration to, censure, limit the activities of, suspend, or revoke the registration of, any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency. This subpart and subpart B shall not apply to proceedings to postpone or suspend registration of a transfer agent or clearing agency pending final determination of denial or revocation of registration.

§ 308.85 Grounds for imposition of sanctions.

(a) The Board of Directors may issue and serve upon any municipal securities dealer for which the FDIC is the appropriate regulatory agency, a written notice of its intention to censure, limit the activities or functions or operations of, suspend, or revoke the registration of, such municipal securities dealer, when the Board determines (1) that such municipal securities dealer (i) has committed any prohibited act or omitted any required act specified in subparagraph (A), (D), or (E) of section 15(b)(4) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o), or (ii) has been convicted of any offense specified in section 15(b)(4)(B) of that Act within 10 years of commencement of proceedings under this section, or (iii) is enjoined from any act, conduct or practice specified in section 15(b)(4)(C) of that Act; and (2) that it is in the public interest to impose any of the foregoing sanctions of this paragraph (a).

(b) The Board of Directors may issue and serve upon any person associated or seeking to become associated with a municipal securities dealer for which the FDIC is the appropriate regulatory agency a written notice of its intention to censure, suspend or bar the person from being associated with the municipal securities dealer, when the Board determines (1) that such person (i) has committed any prohibited act or omitted any required act specified in subparagraph (A), (D) or (E) of section 15(b)(4) of the Securities Exchange Act of 1934, as amended, or (ii) has been convicted of any offense specified in section 15(b)(4)(B) of that Act within 10 years of the commencement of proceedings under this section, or (iii) is enjoined from any act, conduct or practice specified in section 15(b)(4)(C) of that Act; and (2) that it is in the public interest to censure, suspend or bar such person.

(c) The Board of Directors may issue and serve upon any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency, a written notice of its intention to deny registration to, censure, place limitations on the activities or functions or operations of, suspend, or revoke the registration of, the transfer agent or clearing agency, when the Board determines (1) that the transfer agent or clearing agency has willfully violated, or is unable to comply with, any applicable provision of section 17 or 17A of the Securities Exchange Act of 1934, as amended, or any applicable rule or regulation issued pursuant thereto; and (2) that it is in the public interest to impose any of the foregoing sanctions of this paragraph (c).

§ 308.86 Notice and consultation with the Securities and Exchange Commission.

Before initiating any proceedings under § 308.85 (a) or (b), the Board of Directors shall (a) notify the Securities and Exchange Commission of the identity of the municipal securities dealer or associated person against whom proceedings are to be initiated, and the nature of and basis for the proposed action, and (b) consult with the Securities and Exchange Commission concerning the effect of the proposed action on the protection of investors and the possibility of coordinating the action with any proceeding by the Commission against the municipal securities dealer or associated person.

§ 308.87 Notice of intention to impose sanctions.

A notice of intention to impose sanctions referred to in § 308.85 shall contain a statement of the proposed sanctions and the grounds for imposition of the sanctions, and shall fix a time and place for a hearing. The notice shall be delivered by personal service, by registered or certified mail, or by other appropriate means, to the last known address of the party upon whom sanctions are to be imposed.

§ 308.88 Hearing.

The hearing shall not be earlier than 30 days nor later than 60 days after the date of service of the notice, unless an earlier or later date is set by the Board of Directors at the request of the municipal securities dealer, associated person, or transfer agent or clearing agency, and for good cause shown. The procedures of subpart B and the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) shall apply to the hearing. Failure to appear at the hearing in person or by a duly authorized representative shall be deemed a consent to issuance of the order by the Board.

§ 308.89 Issuance and effective date of order imposing sanctions.

If the Board of Directors finds upon the record made at the hearing pursuant to § 308.88 that the grounds specified in the notice pursuant to § 308.87 have been established, the Board may issue an order containing the sanctions specified in the notice. The order shall be effective at the expiration of 30 days after the service of the notice, except that an order of censure, denial or revocation of registration is effective when served. A consent order in accordance with § 308.88 shall become effective at the time specified therein. All orders shall remain effective and enforceable except to the extent they are stayed, modified, terminated or set aside by the Board or a reviewing court; however, orders of suspension shall continue in effect no longer than 12 months.

Subpart L—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

§ 308.90 Scope.

The rules and procedures of this subpart apply to proceedings by the Board of Directors to exempt in whole or in part, an issuer of securities from the provisions of section 12(g), 13, 14(a), 14(c), 14(d), or 14(f) of the Securities Exchange Act of 1934, as amended, or to exempt an officer or director or beneficial owner of securities of such an issuer from the provisions of section 16 of that Act.

§ 308.91 Application for exemption.

Any interested person may file a written application for an exemption under this subpart with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429. The application shall specify the exemption sought and the reason therefor, and shall include a statement indicating why the exemption would be consistent with the public interest or the protection of investors.

§ 308.92 Newspaper notice.

If the Board of Directors decides to further consider the application for exemption, it shall serve upon the applicant instructions to publish one notice in a newspaper of general circulation in the community where the main office of the issuer is located. The applicant shall furnish proof of such publication to the Executive Secretary. The notice shall contain (a) the name and address of the issuer and the name and title of the applicant, (b) the exemption sought, (c) a statement that a hearing will be held, and (d) a statement that within 30 days of publication of the newspaper notice, interested persons may submit to the FDIC written comments on the application for exemption and a written request for an opportunity to be heard. The address of the FDIC must appear in the notice.

§ 308.93 Notice of hearing.

Within 10 days after expiration of the period for receipt of comments pursuant to § 308.92, the Executive Secretary shall serve upon the applicant and any person who has requested an opportunity to be heard, a notice indicating the place and time of the hearing, to be held not later than 30 days after service of the notice of hearing. The notice shall contain the name and address of the presiding officer designated by the Board of Directors and a statement of the matters to be considered.

§ 308.94 Hearing.

Parties to the hearing may appear personally, through counsel, or personally with counsel. Parties shall have the right to introduce relevant and material documents and to make an oral statement. The formal rules of evidence, the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554–557), and subpart B shall not apply. The Board of Directors or the presiding officer shall have discretion to permit presentation of witnesses within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall not be sworn. The presiding officer may ask questions of any witness and each party may cross-examine any witness presented by an opposing party.

§ 308.95 Decision of the Board of Directors.

Following submission of the hearing transcript to the Board of Directors, the Board may grant the exemption where it determines by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the issuer's activities, the issuer's income or assets, or otherwise, that the exemption is consistent with the public interest or the protection of investors. An exemption shall be granted by an order specifying the terms of the exemption, the person to whom it is granted, and the period for which it is granted. A copy of the order shall be served upon each party to the proceeding.

Subpart M—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

§ 308.96 Scope.

This subpart, and the Equal Access to Justice Act (5 U.S.C. 504 and 504 note) which it implements, apply to adversary adjudications that are pending before the FDIC at any time between October 1, 1981, and September 30, 1984. The types of adjudication covered by this subpart are those listed in § 308.03.

§ 308.97 Eligibility of applicants.

(a) To be eligible for an award under this subpart, an applicant must have been named or admitted as a party to the proceeding. In addition, the applicant must show that it meets all other conditions of eligibility set out in this subpart.

(b) The types of eligible applicant are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) A sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees; and

(3) A corporation, association, partnership, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevails are related primarily to personal interests rather than to business interests.

(d) For the purpose of determining eligibility, the net worth of an applicant shall be its net worth as of the date the underlying proceeding was initiated. As provided in § 308.102(d), in the case of a bank, net-worth information reported in conformity with applicable instructions and guidelines on the bank's Consolidated Report of Condition filed for the last reporting date before the initiation of the underlying proceeding will be used in establishing the bank's net worth as of the date the underlying proceeding was initiated.

(e) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the proceeding was initiated. Part-time employees are included as though they were full-time employees.

(f) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(g) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. The aggregated net worth shall be adjusted if necessary to avoid counting the net worth of any entity twice. As used in this subpart, "affiliates" are (1) individuals, corporations, and entities that directly or indirectly or acting through one or more entities control a majority of the voting shares of the applicant, and (2) corporations and entities of which the applicant directly or indirectly owns or controls a majority of the voting shares. The Board of Directors may, however, on the recommendation of the administrative law judge or otherwise, determine that such aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart in light of the actual relationship between the affiliated entities. In such a case the net worth and employees of the relevant affiliate or affiliates will not be aggregated with those of the applicant. In addition, the Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(h) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that

would be ineligible is not itself eligible for an award.

§ 308.98 Prevailing party.

(a) An eligible applicant who, following litigation, has gained victory on the merits in the proceeding is a "prevailing party."

(b) An eligible applicant may be a "prevailing party" if a settlement of the proceeding was effected on terms favorable to it or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

(c) When a proceeding has presented a number of discrete substantive issues, an applicant may have prevailed even though all the issues were not resolved in its favor. If such an applicant is deemed to have prevailed, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under § 308.99 if proration were not performed.

(d) Whether separate or prorated treatment under the preceding paragraph is appropriate, and the appropriate proration percentage, shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 308.99 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses unless the position of the FDIC during the proceeding was substantially justified. To avoid an award, counsel for the FDIC must carry the burden of proof that its position was reasonable in fact and law.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings or if special circumstances make the award sought unjust.

(c) Awards for fees and expenses incurred before the date on which a proceeding was initiated are allowable if their incurrence was necessary to prepare for the proceeding.

§ 308.100 Measure of awards.

(a) Except as limited by the next subsection, awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate.

(b) No award under this subpart for the fee of an attorney or agent may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FDIC pays expert witnesses. An award may also, however, include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 308.101 Contents of application.

(a) An application for an award of fees and expenses under the Act shall contain (1) the name of the applicant and an identification of the proceeding, (2) showing that the applicant has prevailed, and an identification of each issue with regard to which the applicant believes that the position of the FDIC in the proceeding was not substantially justified, (3) a statement of the amount of fees and expenses for which an award is sought, (4) if the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated, (5) a description of any affiliated individuals or entities, as defined in § 308.97(g), or a statement that none exist, (6) a declaration that the applicant, together with any affiliates, had a net worth not more than the ceiling established for it by § 308.97(b) as of the date the proceeding was initiated, and (7) any other matters that the applicant wishes the FDIC to consider in determining whether and in what amount an award should be made.

(b) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

§ 308.102 Statement of net worth.

(a) A statement of net worth must be filed with the application. It need not be served on parties to the underlying proceeding other than counsel for the FDIC. Unless otherwise ordered by the Board or required by law, the statement shall be for the confidential use of the Board and the administrative law judge.

(b) The statement of net worth shall reflect the net worth of the applicant and all affiliates of the applicant as affiliates are defined in § 308.97(g). To determine eligibility for an award, net worth of affiliates will be aggregated with that of the applicant according to § 308.97(g).

(c) The statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the underlying proceeding. Unaudited financial statements are acceptable unless the administrative law judge or the Board shall otherwise require. Financial statements or reports to an agency of the Federal Government or to a State, prepared before the initiation of the underlying proceeding for other purposes, and accurate as of a date not more than three months prior to the initiation of the underlying proceeding, are acceptable in establishing net worth as of the time of the initiation of the underlying proceeding, unless the administrative law judge or the Board shall otherwise require. If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition filed before the initiation of the underlying proceeding. In all cases the administrative law judge or the Board may call for additional information needed to establish the applicant's net worth as of the initiation of the underlying proceeding.

(d) In the case of banks, except as adjusted by additional information that was called for under the preceding sentence, net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition filed for the last reporting date before the initation of the underlying proceeding. In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 308.97(f). Assets and liabilities of individuals shall include those beneficially owned within the meaning of § 335.102(e) of the FDIC's rules and regulations.

§ 308.103 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board of Directors may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 308.104 Filing and service of documents.

(a) Any application for an award and any other pleading or document related to an application shall be filed with the Executive Secretary. It shall conform to the requirements of § 308.19 (on filing papers) and shall be served on all parties to the underlying proceeding in accordance with § 308.21(b) (on service), except as provided in § 308.102(a) for statements of net worth.

(b) An application may be filed with the Executive Secretary whenever the applicant has prevailed in the proceeding or in a discrete significant substantive portion of the proceeding but in no case later than 30 days after service of the final order of the Board of Directors in disposition of the proceeding.

§ 308.105 Answer to application.

(a) Within 20 days after service of an application, counsel for the FDIC may file an answer to the application. Unless counsel for the FDIC requests and is granted an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 20-day period will be treated as a consent to the award requested.

(b) If counsel for the FDIC and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 20 days, and further extensions may be granted by the administrative law judge upon the joint request of counsel for the FDIC and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 308.107.

(d) Reply to answer. The applicant may file a reply if counsel for the FDIC has addressed in his or her answer any of the following issues: That the position of the FDIC was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 308.107.

(e) Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 308.106 Comments by other parties.

Any party to the proceeding, other than the applicant and counsel for the FDIC, may file comments on an application within 20 days after service of the application. If the applicant is entitled to file a reply to an answer under § 308.105(d), another party may file comments on the answer within 15 days after service of the objection. A commenting party may not participate further in proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit additional exploration of matters raised in the comments.

§ 308.107 Further proceedings.

(a) *General.* Ordinarily, the determination of a recommended award will be made by the administrative law judge on the basis of the written record. However, on request of either the applicant or counsel for the FDIC, or on his or her initiative, the administrative law judge may order further proceedings such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application and will be conducted as promptly and expeditiously as possible.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* The administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 308.108 Recommended decision.

The administrative law judge shall file a recommended decision on the fee application with the Executive Secretary no later than 90 days after the filing of the application or 30 days after the conclusion of the hearing, whichever is later. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings on whether the FDIC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall also file with the Executive Secretary the record of the proceeding on the fee application and a proposed order and at the same time serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 308.109 Decision of the Board of Directors.

(a) Within 15 days after service of the recommended decision, findings, conclusions, and proposed order, the

applicant or counsel for the FDIC may file with the Executive Secretary written exceptions thereto. A supporting brief may also be filed.

(b) The Board of Directors shall render its decision within 60 days after the matter is submitted to it. The Executive Secretary shall furnish copies of the decisions and order of the Board to the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 308.110 Payment of awards.

An applicant seeking payment of an award shall submit to the Executive Secretary a statement that it will not seek review of the decision or order in the United States courts. The FDIC will pay the amount awarded within 30 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

By order of the Board of Directors, December 21, 1981.

Federal Deposit Insurance Corporation

Alan J. Kaplan,

Assistant Executive Secretary.

[FR Doc. 81-36043 Filed 12-28-81; 8:45 am]

BILLING CODE 6714-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 720

Description of Office, Disclosure of Official Records, Availability of Information, and Promulgation of Regulations

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) has reviewed its existing regulations governing the disclosure of official records, the availability of information and the promulgation of regulations. As a result, NCUA is revising its regulations to consolidate and clarify NCUA policy on the availability of information.

EFFECTIVE DATE: December 29, 1981.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Anne K. Scully, Attorney-Advisor, Office of General Counsel, at the above address, telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: On August 13, 1981, the NCUA Board issued for public comment proposed rules regarding NCUA policy on availability and disclosure of information under the Freedom of Information Act. A discussion of the significant issues raised by the comments as well as a section by section analysis of the provisions revised in the final rule follow.

Unpublished Confidential and Privileged Information

Section 720.4 adds clarifying language to the Freedom of Information Act exemptions to avoid conflicting interpretations of the exemptions and to provide additional examples of agency records to which each exemption applies. The commentors supported the additional language because it clarifies NCUA's interpretation of the Freedom of Information Act and how requests will be treated.

One commentor questioned whether the proposed § 720.4(a)(2) would affect public availability of the NCUA Examiners' Manuals and/or Guides. The language in § 720.4(a)(2) indicates that all manuals and instructions to examiners could be subject to release, but only to the extent that the information, if released, would not permit a circumvention of law. For example, portions of a manual describing examination techniques and procedures would not be publicly available if knowledge of these techniques and procedures would permit credit union officials to alter records to hide violations of law. The commentor favored public availability of NCUA's Examiner's Guide because it would be beneficial to credit unions as well as consistent with the intent of the Freedom of Information Act. The additional language is intended to enunciate NCUA's general policy of authorizing release of the applicable examiners' guides edited in accordance with the FOIA exemption. The manuals are available to the public through a Freedom of Information Act request.

One commentor favored deletion of the last sentence of § 720.4(a)(4), regarding trade secrets and commercial or financial information. This sentence provides that assurances of confidentiality given by NCUA staff are not binding upon the agency. The commentor objected to this provision because of its chilling effect on NCUA's relationship with credit unions, thereby undermining the integrity of the examination process.

However, § 720.4(a)(4) applies only to business information and trade secrets obtained by NCUA outside of the examination process. Any and all information obtained by NCUA pertaining to particular credit unions would fall under the exemption set forth in § 720.4(a)(8). Thus, there should be no chilling effect on the examiners' relations with credit unions. In addition, while the issue as to whether assurances of confidentiality by staff are binding upon NCUA is addressed by existing caselaw, the purpose of this explicit provision is to ensure that such promises of confidentiality are only made by the appropriate officials of NCUA who are authorized to bind the agency. This provision is not intended to indicate that clearly exempt material will not be accorded confidential treatment.

Release of Exempt Records

Section 720.5 establishes NCUA's policy for the discretionary release of information otherwise protected by the Freedom of Information exemptions. The United States Supreme Court has clearly established that the Freedom of Information Act exemptions are permissive rather than mandatory, *Chrysler. Corp.* v. *Brown*, 441 U.S. 281 (1979). The establishment of clear guidelines for the release of exempt material will help to assure that NCUA will not act in an arbitrary and capricious manner. This provision will also bring NCUA's regulations in line with the regulations of the other Federal financial institution regulatory agencies, which, to varying extents, permit the release of exempt material. *See* 12 CFR 4.16 (Comptroller of the Currency), 261.6 (Federal Reserve Board), 309.4 and 309.6 (Federal Deposit Insurance Corporation), and 505.5 (Federal Home Loan Bank Board).

Two commentors addressed the issue of release of exempt material to third parties under proposed § 702.5(b)(3). Both objected to the disclosure of credit union records, particularly examination reports, to third parties. The first commentor was concerned that the section represents a further weakening of the level of confidentiality in the examination process. Further, he felt that the language broadened the scope of NCUA's position in reference to its Interpretive Ruling and Policy Statement (IRPS) on release of consumer examination reports to a limited group of third parties. The commentor proposed a modification of this section to provide that NCUA not be vested with any discretion to release any examination reports to third parties (to maintain a continued confidential relationship between NCUA and credit union staff needed to ensure an effective examination process). The second commentor stated that no credit union records of any kind should be disclosed

to a third party absent a court order. However, he felt that if a member of a credit union is not adequately protected under existing consumer regulations, then that member should have the ability to obtain information concerning its credit union's violation of consumer laws from NCUA through a FOIA request.

After considering the issues raised, the NCUA Board believes that inclusion of this section will neither impair the confidential nature of the examination process nor supercede or alter any existing law or policy with respect to release of certain exempt materials to specified third parties. Setting forth the basic guidelines for the discretionary release of exempt material is not intended to create a departure from NCUA's past treatment of examination records. Rather, it is intended to foster the confidential relationships created during the examination process by ensuring, first, that *only* the NCUA Board or specific persons designated in writing by the Board can release this information; second, that the person requesting the information provides justification for the request; third, that conditions are imposed on the release to protect the confidential nature of the information; and fourth, that the information be released *only* upon a finding of good cause. A total, absolute prohibition against the release of exempt material would unrealistically and unnecessarily hamstring this agency's clear discretionary authority. Therefore, the NCUA Board believes that the strict ground rules set forth in § 720.5(b)(3) are preferable.

Release of Exempt Records Subject to Subpoena

Section 720.6 sets forth NCUA's policy when the Agency is subject to requests for exempt material by legal process, particularly when and under what circumstances exempt information that is the subject of a subpoena will be released. This provision is necessary to protect NCUA's interest in the exempt material.

Fee Schedule for Document Search and Duplication

One change is made to § 720.8(a) regarding charges for publications to clarify that requestors may be charged at cost for documents and publications that NCUA has available for release in printed form. While these publications are normally available to the public through the Government Printing Office for standard fees, NCUA also has copies of the same materials.

Publications Available to the Public

Section 720.8, includes former §§ 701.16, and 701.17, consolidating into one rule the publications that are available to the public for inspection and copying, and the procedures for making a FOIA request for these publications.

Promulgation of Rules and Regulations

Section 720.10 sets forth NCUA's procedures for developing regulations, incorporating the requirements of the Administrative Procedures Act (5 U.S.C. 551, *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*), the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Financial Regulation Simplification Act (12 U.S.C. 3521 *et seq.*), and the Board's Interpretive Ruling and Policy Statement.

Regulatory Flexibility Act

The NCUA Board certifies that these rules will not have a significant economic impact on a substantial number of small credit unions because the rules concern only agency organization, procedure or practice pertaining to public access to official records and development of regulations. Therefore, a regulatory flexibility analysis is not required pursuant to 5 U.S.C. 605(b).

Accordingly, 12 CFR 701.16, 701.17 and 701.18 are removed and 720.4 through 720.9 are revised as set forth below.

Rosemary Brady,

Secretary of the Board.

Dated: December 17, 1981.

Authority: Sec. 120, 73 Stat. 635 (12 U.S.C. 1766); sec. 209, 84 Stat. 1104 (12 U.S.C. 1789).

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

§§ 701.16—701.18 [Removed]

1. Sections 701.16, 701.17, and 701.18 are proposed to be removed.

PART 720—DESCRIPTION OF OFFICE, DISCLOSURE OF OFFICIAL RECORDS—AVAILABILITY OF INFORMATION, PROMULGATION OF REGULATIONS

§ 720.4 [Amended]

2. 12 CFR 720.4(a) is revised to read as follows:

(a) All records of the Administration, or any officer, employee, or agent thereof, are confidential and privileged and not subject to disclosure, except as otherwise provided in this Part, if such records are:

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to an Executive Order.

(2) Records related solely to the internal personnel rules and practices of the Administration. This exemption applies to internal rules or instructions to Administration personnel which must be kept confidential in order to assure effective performance of the functions and activities for which the Administration is responsible and which do not affect members of the public. This exemption also applies to manuals and instructions to examiners to the extent that release of the information contained therein would permit circumvention of laws or regulations.

(3) Specifically exempted from disclosure by statute (other than the Privacy Act of 1974, 5 U.S.C. 552a), where the statute either makes non-disclosure mandatory or establishes particular criteria for withholding information.

(4) Records which contain trade secrets and commercial or financial information which relates to the business, personal or financial affairs of any person or organization, is furnished to NCUA and is confidential or privileged. This exemption includes, but is not limited to, information such as various types of confidential sales and cost statistics, trade secrets, and names of key customers and personnel. Assurances of confidentiality given by Administration staff are not binding upon the Administration.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Administration. This exemption preserves the existing freedom of Administration officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within the Administration or between the Administration and other governmental agencies.

(6) Personnel and medical files and similar files (including financial files), the disclosure of which without written permission would constitute a clearly unwarranted invasion of personal privacy. Examples of files exempt from disclosure include, but are not limited to (i) the personnel records of the Administration; (ii) the personnel records voluntarily submitted by private parties in response to the

Administration's requests for proposals; (iii) files containing reports, records or other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken.

(7) Contained in investigatory files compiled for law enforcement purposes: *Provided,* That disclosure of the records would (i) interfere with enforcement proceedings; (ii) deprive a person of a fair trial or an impartial adjudication; (iii) result in an unwarranted invasion of personal privacy; (iv) reveal the identity of a confidential source, or any confidential information furnished by a confidential source in the course of a criminal investigation or a lawful national security intelligence investigation; (v) disclose investigative techniques and procedures; or (vi) endanger the safety of law enforcement personnel. This includes, but is not limited to, information relating to enforcement proceedings upon which the Administration has acted or will act in the future.

(8) Contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of the Administration or any agency responsible for the regulation or supervision of financial institutions. This includes all information, whether in formal or informal report form, the disclosure of which either would harm the financial security of credit unions or would interfere with the relationship between the Administration and member credit unions.

* * * * *

§§ 720.5—720.9 [Redesignated as §§ 720.7—720.11]

3. Existing §§ 720.5 through 720.9 are redesignated as §§ 720.7 through 720.11 and new §§ 720.5 and 720.6 are added to read as follows:

§ 720.5 Release of exempt records.

(a) *Prohibition against disclosure.* Except as provided in §§ 720.3, 720.4 and 720.5(b) no officer, employee, or agent of the Administration or of any federally chartered or insured credit union shall disclose or permit the disclosure of any exempt records of the Administration to any person other than those officers, employees, or agents of the Administration or of the credit union properly entitled to such information for the performance of their official duties.

(b) *Disclosure authorized.* Exempt records of the Administration may be disclosed only in accordance with the following conditions and requirements.

(1) *Exempt records—disclosure to credit unions, financial institutions and to State and Federal Agencies.* In its sole discretion, the NCUA Board, or any person designated by it in writing, may make available to certain Governmental agencies and insured financial institutions copies of reports of examination and other documents, papers or information for their use, when necessary, in the performance of their official duties or functions. All reports, documents and papers made available pursuant to this paragraph shall remain the property of the National Credit Union Administration. No person, agency or its employee shall disclose the reports or exempt records without express written authorization of the Administration.

(2) *Exempt records—disclosure to investigatory agencies.* The Board, or any person designated by it in writing, may in its discretion and in appropriate circumstances, disclose to proper Federal or State authorities copies of exempt records pertaining to irregularities discovered in credit unions which may constitute either unsafe or unsound practices or violations of Federal or State civil or criminal law.

(3) *Exempt records—disclsoure to third parties.* The Board, or any person designated by it in writing, may disclose copies of exempt records to any third party where requested to do so in writing. The request shall: (i) Specify the record or records to which access is requested; and (ii) give the reasons for the request. Any Administration employee authorized to disclose exempt Administration records to third parties may disclose the records only upon determining that good cause exists for the disclosure. The Administration official shall impose such terms and conditions as are deemed necessary to protect the confidential nature of the record, the financial integrity of any credit union or other organization or person to which the record relates, and the legitimate privacy interests of any individual named in such records.

§ 720.6 Subpoenas.

(a) *Service.* Any subpoena or other legal process requesting agency records shall be served upon the General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456, or upon the Regional Director of the NCUA Region where the legal action from which the legal process issued is pending.

(b) *Advice to person served.* (1) If any officer, employee or agent of the Administration is served with a subpoena, court order or other legal process requiring that person's attendance as a witness concerning written information or the production of documents that cannot be disclosed under § 720.4, that person should promptly inform the Office of General Counsel of such service and of all relevant facts, including the nature of the documents and information sought in the subpoena and any facts and circumstances which may be of assistance to the General Counsel in determining whether such documents or information should be produced.

(2) If any third party who is not an officer, employee or agent of the Administration is served with a subpoena, court order or other legal process requiring that party to produce such records or to testify with respect to the requested records, such party should notify the Office of General Counsel in accordance with the procedures set forth in § 720.6(b)(1).

(c) *Appearance by person served.* Absent the authorization of the Office of General Counsel to disclose the requested information, any officer, employee or agent of the Administration (and any third party having custody of exempt records of the Administration) who is required to respond to the subpoena or other legal process shall attend at the time and place specified and shall respectfully decline to produce the documents and records or to disclose the information called for, basing his refusal upon this paragraph.

4. Redesignated § 720.7(a) is revised to read as follows:

§ 720.7 Fee schedule for document search and duplication.

(a) A fee shall be assessed for the searching and processing of requested documents on the following basis:

Direct cost of: Clerical time, $5.97 per hour; professional time, $15.50 per hour; charge per page of material duplicated, $.25.

Computer costs shall be assessed in accordance with a standard formula based on computer time required. A computer cost estimate shall be furnished to the requestor at the time the request is granted.

Actual cost of transportation of people or records if required to process the request.

The fees assessed for searching and processing requests are subject to an annual review and may be revised to reflect the prevailing wage and cost rates. Requestors may be charged at cost for those documents and publications which NCUA has available for release in printed form.

§§ 720.8 and 720.9 [Amended]

5. Redesignated §§ 720.8(a)(1), (c)(1) and (c)(2) and 720.9(c)(1) are amended: by removing the words "Deputy Director" and inserting, in their place, the words "Freedom of Information Officer".

6. Redesignated § 720.8(b) is revised to read as follows:

§ 720.8 Requests for information and determinations.

* * * * *

(b) *Certain Publications.* (1) A master list of Federal credit unions, arranged by state, is maintained at NCUA headquarters and is available for inspection and copying. Each Regional Office maintains a similar list for the states for which it has jurisdiction. These lists are also available for inspection and copying. In addition, a directory of all Federally insured credit unions, which is updated periodically, is available for purchase at NCUA cost. The directory may be obtained by contacting the Freedom of Information Officer, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

(2) Interpretive Rulings and Policy Statements which do not appear in NCUA publications shall be available for inspection and copying at each Regional Office and at NCUA headquarters in Washington, D.C.

(3) Section 701.14 of this chapter describes certain manuals, booklets and other materials which are available and the places where they may be obtained, inspected or copied.

7. Redesignated § 720.9(a)(1) is revised to read as follows:

§ 720.9 Agency determination.

(a) * * *

(1) Determine within 10 working days (except legal public holidays) after the receipt of any such request whether, or the extent to which, to comply with such request; will upon such determination notify the person making the request that any adverse determination is not a final agency action, and that such person may appeal any adverse determination to the Director of the Office of Administration; and

* * * * *

§ 720.10 [Amended]

8. Redesignated § 720.10 is revised to read as follows:

(a) The Administration's procedures for developing regulations shall be governed by the Administrative Procedures Act (5 U.S.C. 551), the Financial Regulation Simplification Act of 1980 (12 U.S.C. 3521 et seq.), the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), and the Administration's policies for the promulgation of rules as set forth in its Interpretive Ruling and Policy Statement (IRPS) number 81–4, dated June 3, 1981.

(b) *Petitions.* Any interested person may petition the Board for the issuance, amendment, or repeal of any regulation by submitting such petition in writing together with a complete and concise statement of the petitioner's interest in the subject matter and the reasons why the petition should be granted. Such petition shall be submitted to the Regulatory Development Coordinator, Office of General Counsel, National Credit Union Administration, 1776 G St., NW., Washington, D.C. 20456.

* * * * *

[FR Doc. 81-37118 Filed 12-28-81; 9:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 371, 372, 376 and 385

Revision of Policy on Exports to the People's Republic of China

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: An Administration review of relations with China has resulted in a more liberal export control policy. The Export Administration Regulations are amended to explain the new policy and set forth likely approval levels for certain items.

EFFECTIVE DATE: December 29, 1981.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–4811).

SUPPLEMENTARY INFORMATION: Section 5(b) of the Export Administration Act of 1979 provides that, in administering national security export controls, "United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President considers appropriate."

The United States has reviewed its relationship with China in order to formulate a more mutually beneficial policy. The review determined that it is in our national interest to foster a strong, secure and friendly China, capable of deterring potential aggressors and contributing to peace and stability, and to participate in China's economic development for the benefit of China and the United States. The Administration recognizes the need for a clear trade policy that will lend certainty and predictability to American business in trading with China, while ensuring our national security, promoting U.S. foreign policy and protecting U.S. commercial interests.

The export licensing policy resulting from this review will permit approval of export licenses for commodities at significantly higher technical levels than allowed previously. In general, there will be a predisposition for approval for products with technical levels twice those previously approved to China. When doubling previous levels is impractical, the Department will use the interagency review process to determine the acceptability of proposed exports, and will issue advisory notes on specific commodities whenever possible.

To implement this policy, the Export Administration Regulations are amended to remove the People's Republic of China (Country Group P) from § 385.2, which describes policy toward country groups Q, W, and Y, and place it separately in § 385.3. In addition, new notes are added to Supplement No. 1 to Part 385 to provide advice on the likelihood of approving commodities for China when the general notes in Supplement No. 1 are not applicable.

Finally, these regulations make a number of minor amendments to Parts 370–372 and 376. These amendments mostly involve changes to the provisions governing exports under several types of general licenses.

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Adminstration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule relates to a foreign affairs function of the United States and is therefore exempt from the requirements of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

Accordingly the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

§ 370.6 [Amended]

1. Section 370.6 is amended by:

I. Removing the symbol "P," from the title of paragraph (a)(1);

II. Removing the symbol "P," from the first sentence of paragraph (a)(1);

III. Revising the title of paragraph (a)(2) to read "Country Group P or Q.";

IV. Revising the introductory text of paragraph (a)(2) to read "Shipments to Country Group P or Q require a validated license—."

§ 370.7 [Amended]

2. Paragraph (c)(2) of § 370.7 is amended by removing the phrase "P or."

§ 370.9 [Amended]

3. Section 370.9 is amended by:

I. Removing the symbol "P," from the following places: the title; the introductory paragraph (2 places); paragraph (b), (2 places); and the footnote to the section title (2 places);

II. Revising in the introductory paragraph the phrase "Country Group Q, S, T, V, or W" to read "Country Group P, Q, S, T, V, or W."

PART 371—GENERAL LICENSES

§ 371.2 [Amended]

4. Paragraph (c)(2) of § 371.2 is amended by removing the symbol "P," (2 places).

§ 371.3 [Amended]

5. Paragraph (a) of § 371.3 is amended by removing the symbol "P."

§ 371.4 [Amended]

6. Section 371.4 is amended by:

I. Removing the symbols "P," and "P or" in paragraph (a)(2) (2 places), and

II. Revising the phrase "Country Group Q" to read "Country Group P or Q" in paragraph (a)(3).

§ 371.5 [Amended]

7. Paragraph (a)(2) of § 371.5 is amended by revising the phrase "Country Group Q" to read "Country Group P or Q."

§ 371.6 [Amended]

8. Paragraph (a) of § 371.6 is amended by revising in the next to the last sentence the phrase "Country Group P, S, W, Y, or Z" to read "Country Group P, Q, S, W, Y, or Z."

§ 371.12 [Amended]

9. Section 371.12 is amended by removing the symbol "P," in paragraphs (a), (b), (c) and (c)(2).

§ 371.15 [Amended]

10. Section 371.15 is amended by:

I. Removing the symbol "P," in paragraph (c)(2); and

II. Revising in paragraph (c)(3) the phrase "Country Group Q" to read "Country Group P or Q."

§ 371.18 [Amended]

11. Paragraph (b)(1)(ii) of § 371.18 is amended by revising the phrase "Country Group P, Y or Z" to read "Country Group P, Q, S, W, Y, or Z."

§ 371.19 [Amended]

12. Paragraph (b)(2) of § 371.19 is amended by removing the symbol "P,".

PART 372—INDIVIDUAL VALIDATED LICENSES AND AMENDMENTS

§ 372.8 [Amended]

13. Paragraph (b) of § 372.8 is amended by:

I. Removing the symbol "P," in the following places: the title of the paragraph; paragraph (b)(1), (4 places); paragraph (b)(2); and paragraph (b)(3), (3 places); and

II. Revising in paragraph (b)(1) the phrase "Country Group Q, S, T, V, or W" to read "Country Group P, Q, S, T, V, or W."

§ 372.11 [Amended]

14. Paragraph (g) of § 372.11 is amended by revising the phrase "Country Group P, S, Y, or Z" in paragraph (g)(3)(i) to read "Country Group P, Q, S, W, Y, or Z."

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

§ 376.2 [Reserved]

15. Section 376.2 is removed and reserved.

PART 385—SPECIAL COUNTRY POLICIES AND PROVISIONS

16. (a) The title of § 385.2 is revised to read as follows:

§ 385.2 Country Groups Q, W, and Y [1]; U.S.S.R., Other Warsaw Pact Countries, Albania, Mongolian People's Republic, and Laos.

* * * * *

(b) the phrase "People's Republic of China" is removed from paragraph (a) of § 385.2; and

(c) the symbol "P," is removed from paragraph (a) of § 385.2.

17. A new § 385.3 is added as follows:

§ 385.3 Country Group P: People's Republic of China

(a) As authorized by section 5 of the Export Administration Act of 1979, a validated license is required for the export of certain commodities and technical data to the People's Republic of China (PRC). Such licenses permit a review of applications to assure that exports are consistent with the policy set forth in section 3(2)(A) of the Export Administration Act "to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States." The review under this licensing standard generally includes an analysis of the kinds and quantities of commodities or technologies to be exported; whether the same or comparable items are available abroad without restriction; the use pattern of the items to be exported; the intended end-use; and the ultimate end-users.

(b) The general licensing policy is to approve exports for China (Country Group P) at significantly higher technical levels than for Country Groups Q, W, and Y. Licenses may be approved even when the end-use is military or the end-user engages in military activity, if the proposed export is otherwise appropriate for a stated and accepted end-use. Potential for use of equipment or data in the design, development, or manufacture of tactical military items will not necessarily preclude approval. Approval is not likely when the potential military application is so significant that the export would present an unacceptable risk regardless of the stated end-use. Of particular concern are technologies that would make a direct and significant contribution to nuclear weapons and their delivery systems, electronic and anti-submarine warfare, and intelligence gathering. Licenses will not be denied solely because of the technical level of the equipment, provided the equipment does not substantially exceed the

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[1] * * *

requirements of the stated and accepted end-use.

(c) Although each application will be considered individually, certain goods on the CCL are more likely to be approved than others. The Advisory Notes in Supplement No. 1 to this Part 385 describe goods likely to be approved for China, as well as certain other country groups. Those notes in Supplement No. 1 headed "Note for Country Group P only" provide guidance on equipment more likely to be approved for China than for Country Groups Q, W and Y.

(d) Applications covering commodities and technical data approved by the United States that are controlled by the COCOM international export control system may have to be forwarded to COCOM for consideration in accordance with established procedures before a license is issued.

(e) Section 6(j) of the Export Administration Act provides for validated license control to all destinations except the NATO members, Japan, Australia, and New Zealand of crime control and detection equipment identified in section 376.14, in support of U.S. foreign policy.

18. New Advisory Notes for Supplement No. 1 to Part 385 are added as follows:

I. The existing NOTE to entry 1081A is numbered 1, and a new NOTE numbered 2 is added as follows:

1081A * * *

* * * * *

Notes: 1. * * *

Note for Country Group P Only

2. Licenses are likely to be approved for export to satisfactory end-users of skin mills for civil aircraft (*i.e.*, for non-strategic, non-nuclear use) covered by sub-entry (b) above.

II. The existing NOTE to entry 1091A is numbered 1 and a NOTE 2 is added as follows:

1091A * * *

* * * * *

Notes: 1. * * *

Note for Country Group P Only

2. Licenses are likely to be approved for export to satisfactory end-users of computer numerical control units not exceeding four (4) axes capability, mounted on and exported with machine tools not exceeding four (4) axes, for aircraft and civil industries use.

III. A new entry 1203A is added (in numerical order, disregarding the first digit) reading as follows:

1203A Electric vacuum furnaces, as follows:

(a) Consumable electrode vacuum arc furnaces with a capacity in excess of 20 tons;

(b) Skull type vacuum arc furnaces; and

(c) Specialized parts and controls for the above furnaces.

Note for Country Group P Only

Licenses are likely to be approved for export to satisfactory end-users of electric vacuum furnaces with a capacity up to 40 tons for suitable end-uses and end-users.

IV. Entry 1355A is amended by adding sub-entry (b)(2)(vii), by numbering the existing NOTE as 1, and by adding a NOTE 2 reading as follows:

1355A * * *

* * * * *

(b) * * *

(2) * * *

(vii) Align and expose equipment using photo-optical methods, including projection image transfer equipment, capable of performing any of the following functions:

(a) Production of a useful pattern size of less than 5 micrometers;

(b) Alignment with a precision finer than 1 micrometer;

(c) Field coverage greater than 76.2 x 76.2 mm (3 x 3 inches);

(d) Wafer backside alignment;

(e) Automatic alignment by the sensing of patterns or index marks on the substrate;

(f) Projection image transfer for processing slices (wafers) of 50.8 mm (2 inches) or greater in diameter;

[Non-contacting (proximity) image transfer equipment is covered only by sub-entry 1355(b)(2)(vii)(a) to (vii)(e).]

* * * * *

Notes: 1. * * *

Note for Country Group P Only

2. Licenses are likely to be approved for export to satisfactory end-users of conventional optical (not including projection equipment) equipment used for mask fabrication and processing provided that the equipment was introduced into industry prior to 1977. For example, photolithographic contact mask align and exposure systems with resolution in the 3 to 4 micrometer range may be approved.

V. A new entry 1357A is added (in numerical order, disregarding the first digit) reading as follows:

1357A Filament winding, tape-laying and interlacing machines using materials described in entry No. 1763, as follows:

(a) Machines of which the motions for positioning, wrapping, and winding of fibers are coordinated and programed in three or more axes, specially designed to fabricate composite structures or laminates from fibrous and filamentary materials, and the mechanical parts of the machines, coordinating, and programing controls; or

(b) * * *

(c) * * *

(d) * * *

Note for Country Group P Only

Licenses are likely to be approved for export to satisfactory end-users of machines capable of positioning, wrapping and winding fibers, programmable up to three (3) axes, for non-strategic, non-nuclear related applications.

VI. Entry 1519A is amended by adding a NOTE 4 reading as follows:

1519A * * *

* * * * *

Notes: * * *

Note for Country Group P Only

4. Licenses are likely to be approved for export to satisfactory end-users of data communications equipment, including fiber optics systems, using digital input and output and which are designed for a data signalling rate not exceeding 9,600 bits per second, regardless of the end-use.

VII. Entry 1529A is amended by revising sub-entry (a), adding sub-entries (b)(3)(i), (b)(6), and (c), and adding NOTES 4 through 8 reading as follows:

1529A Electronic measuring, calibrating counting, testing, and/or time interval measuring equipment, whether or not incorporating frequency standards, having any of the following characteristics:

(a) Equipment, as follows:

(1) Designed as reference frequency standards for laboratory use, with a stability over 24 hours or more of 1 part in 10^{10} or better;

(2) Designed for fixed ground use and containing frequency standard(s), with a stability over 24 hours of 1 part in 10^{9} or better; or

(3) Designed for portable or mobile use and containing frequency standard(s), with a stability over 24 hours of 1 part in 10^{8} or better;

(b) * * *

(3) * * *

(i) Network analyzers (for automatic measurement of equivalent circuit parameters over a range of frequencies);

(4) * * *

(5) * * *

(6) Digital instruments incorporating computing facilities, as follows:

(i) Digital test instruments with user accessible reprogramming capability (including digital circuit testers, logic (state and/or timing) analyzers, bus analyzers, serial data analyzers, digital word generators) specially designed for examining and/or comparing the absolute or relative information content (*e.g.*, logic states, mnemonics, etc.), or the timing of one or more digital bit streams, *except:*

(a) Logic probes, logic pulsers, digital current tracers (or current "sniffers"), signature analyzers and other digital circuit testers capable of observing single events and/or providing stimulus at single test points;

(b) Logic clips and logic comparators;

(c) Logic (state and/or timing) analyzers with not more than eight (not including qualifier channel) data channels and a maximum clock rate capability of 2 MHz or less;

(d) Digital word generators capable of operating at a maximum clock rate of 2 MHz or less with word lengths of 8 bits or less;

(ii) Microprocessor and microcomputer development instruments and systems,

specially designed for use in debugging, diagnosing, emulating, simulating, designing, evaluating, programming or reprogramming firmware/software of signal processor-, computer- or memory-based devices, system or microsystems (*e.g.*, emulators, simulators, memory programmers, etc.) *except those which are used only with microprocessors and microcomputers not covered by entry No. 1564;*

(c) Digital counters, as follows:

(1) Capable of counting successive input signals with less than 5 nanoseconds time difference without prescaling (digital division) of the input signal (for counter/timers having a time interval measurement mode, see also sub-entry (d) below);

(2) Employing prescaling of the input signal, in which the prescaler is capable of resolving successive input signals with less than 1 nanosecond time difference; or

(3) Capable of measuring burst frequencies exceeding 100 MHz for a burst duration of less than 5 milliseconds;

* * * * *

Notes: * * *

Notes for Country Group P Only

4. Licenses are likely to be approved for export to National Bureau of Standards type end-users of limited quantities of Cesium atomic standards covered by sub-entry (a) above.

5. Licenses are likely to be approved for export to satisfactory end-users of network analyzers designed for use at frequencies up to 18 GHz covered by sub-entry (b)(3)(i) above.

6. Licenses are likely to be approved for export to satisfactory end-users of microprocessor software development systems and microprocessor software training system covered by sub-entry (b)(6) above for microprocessors which are also approvable under the Advisory Notes to entry No. 1564.

7. Licenses are likely to be approved for export to satisfactory end-users of in-circuit emulators covered by sub-entry (b)(6) and required for use with equipment released by Advisory Note 7 above. PROM and EPROM programmers are specifically excluded from approval with the above systems (See also 1564A).

8. Licenses are likely to be approved for export to satisfactory end-users of non-programmable microwave counters covered by sub-entry (c) above designed for use at frequencies up to 18GHz provided that they are not capable of pulsed RF Measurements.

VIII. Entry 1531A is amended by numbering the existing NOTE as 1 and adding NOTES 2 and 3 reading as follows:

1531A * * *

* * * * *

Notes: 1. * * *

Notes for Country Group P Only

2. Licenses are likely to be approved for export to satisfactory end-users of non-programmable frequency synthesizers provided that their operating frequency is 18 GHz or less.

3. Licenses are likely to be approved for export to satisfactory end-users of programmable frequency synthesizers designed for use at frequencies up to 1.3 GHz with switching times of 5 milliseconds or more.

IX. Entry 1533A is amended by numbering the existing NOTE as 1 and by adding a NOTE 2 reading as follows:

1533A * * *

* * * * *

Notes: 1. * * *

2.Note for Country Group P Only: Licenses are likely to be approved for export to satisfactory end-users of microwave spectrum analyzers designed to operate up to an operating frequency of 18 GHz.

X. Entry 1534A is amended by adding a NOTE 3 reading as follows:

1534A * * *

* * * * *

Notes: * * *

Note for Country Group P Only

3. Licenses are likely to be approved for export to satisfactory end-users of flatbed microdensitometer units with a scanning rate up to *10,000* data points per second with rectilinear apenture and with a figure of merit not exceeding 0.05.

XI. Entry 1564A is amended by adding NOTES 5 through 8 reading as follows:

1564A * * *

* * * * *

Notes: * * *

Notes for Country Group P Only

5. Licenses are likely to be approved for export to satisfactory end-users of silicon single-chip microcomputer microcircuits that are mask programmed for a civil application prior to export and have an operand (data) word length of less than or equal to 8 bits (such as sewing machines, etc.). This entry does *not* include bit-slice microprocessors.

6. Licenses are likely to be approved for export to satisfactory end-users of silicon microprocessor microcircuits having an operand (data) word length of less than or equal to 8 bits, a word/speed ratio of 1.0 or less and a speed power product of 4 microjoules or greater.

7. Licenses are likely to be approved for export to satisfactory end-users of memory microcircuits, as follows:

(a) MOS dynamic RAM's having a maximum number of bits per package of 16,384 bits and an access time of 200 nanosecond or greater;

(b) Mask programmed ROM's with a maximum number of bits per package of 32,768 and 250 nanosecond access time or greater;

(c) MOS static RAM's with a maximum number of bits per package of 4,096 bits and an access time of 250 nanoseconds or greater;

(d) Bipolar RAM's with a maximum number of bits per package of 64 bits and an access time of no less than 30 nanoseconds;

(e) Programmable ROM's having a maximum number of 16,384 bits per package, including stand alone (no external interfacing capability) PROM programmers specially designed for and limited to programming the above devices; and

(f) UV erasable programmable ROM's provided that they have a maximum number of bits per package of 16,384 bits, including stand alone (no external interfacing capability) EPROM programmers specially designed for and limited to programming the above ROM's.

8. Licenses are likely to be approved for export to satisfactory end-users of analog-to-digital converter microcircuits and digital-to-analog converter microcircuits covered by sub-entry II (c)(ii)(21) above, as follows:

(a) Analog-to-digital converter microcircuits provided that they have a linear conversion time not less than 10 microseconds and have a non-linearity characteristic of not better than 0.015 percent; and

(b) Digital-to-analog converter microcircuits provided that they have a settling time of not less than 2 microseconds and not less than 200 nanoseconds when not incorporating an output amplifier and, in addition, do not have a non-linearity of better than 0.02 percent.

XII. Entry 1565A is amended by adding a NOTE 11 reading as follows:

1565A * * *

* * * * *

Notes: * * *

Note for Country Group P Only

11. Licenses are likely to be approved for export to satisfactory end-users of digital computers provided that specifications do not exceed the following:

a. I/O bus rate, or total effective bit transfer rate, whichever is less, plus CPU bus rate = 290 Mbits/sec.

b. Processing Data Rate = 68 Mbits/sec.

c. Internal Memory = 16.8 Mbits.

d. Total effective bit transfer rate = 16 Mbits/sec.

e. Effective bit transfer rate of any peripherial memory device or data channel = 5.2 Mbits/sec.

f. Number of magnetic tape units = 12.

G. Total Connected Net Capacity of Peripheral Memory Devices, (excluding tape) = 9,600 Mbits.

h. Memory Performance Factor (MPF) of 380,000 at an average access time of 30 millisec or greater.

i. Total number of accesses/sec. = 350.

j. Effective bit transfer rate of any one remote terminal device = 9,600 bits/sec.

k. Total effective bit transfer rate of all remote terminal devices = 28,800 bits/sec.

1. Effective bit transfer rate of any interfaced communications channel = 4,800 bits/sec.

m. Interface Equipment *total effective* bit transfer rate = 115.2 Kbits/sec.

n. Interface Equipment *single channel* effective bit transfer rate = 7,200 bits/sec.

XIII. Entry 1568A is amended by revising sub-entry (k)(1), numbering the existing NOTE as 1 and adding a NOTE 2 reading as follows:

1568A* * *

* * * * *

(k) Analog-to-digtal and digital-to-analog converters other than digital voltmeters or counters (see CCL entry No. 1529), as follows:

(1) Electrical input type analog-to-digital converters having any of the following characteristics:

(i) a peak conversion rate in excess of 200,000 complete conversions per second;

(ii) An accuracy in excess of 1 part in more than 10,000 of full scale; or

(iii) A figure of merit of 1×10^8 or more (derived from the number of complete conversions per second divided by the accuracy);

2. * * *

3. * * *

4. * * *

* * * * *

Notes: 1. * * *

Note for Country Group P Only

2. Licenses are likely to be approved for export to satisfactory end-users of analog-to-digital converter modules having an accuracy of 1 part in 20,000 and a figure of merit of 5×10^8.

XIV. Entry 1572A is amended by adding NOTES 5 and 6 reading as follows:

1572A * * *

* * * * *

Notes: * * *

Notes for Country Group P Only

5. Licenses are likely to be approved for export to satisfactory end-users of analog (instrumentation) magnetic tape recorders covered by sub-entry (a) above having a bandwidth capability of 2 MHz, provided that they have less than 28 tracks, are equipped with a tape-derived servo speed control and have a time displacement error of not less than 1 microsecond at a tape speed of 60 inches per second.

6. Licenses are likely to be approved for export to satisfactory end-users of incremental recorders having a maximum stepping rate not exceeding 6 inches per second.

XV. Entry 1584A is amended by revising sub-entry (e), numbering the existing NOTE as 1 and adding NOTES 2 and 3 reading as follows:

1584A * * *

* * * * *

(e) Using sampling techniques for the analysis of recurring phenomena which increase the effective bandwidth of an oscilloscope or time domain reflectometer to a frequency greater than 1,000 MHz; or

* * * * *

Note: 1. * * *

Notes for Country Group P Only

2. Licenses are likely to be approved for export to satisfactory end-users of sampling oscilloscopes covered by sub-entry (e) above provided that they have an effective bandwidth of 5 GHz or less.

3. Licenses are likely to be approved for export to satisfactory end-users of time domain reflectometers.

XVI. A new entry 4590B is added (in numerical order, disregarding the first digit) reading as follows:

4590B Multispectral image processing systems or digital image display enhancement equipment which provide or accept signals of sufficient composite information that when connected to an optical display device will have all of the following capabilities:

(a) Image construction of at least 60 Raster lines (*i.e.*, 60x60 resolvable elements, 60x60 resolution cells or Pixels, or 60x60 images);

(b) Each image element is capable of being displayed in at least 16 different shades of color or gray; and

(c) The system has conversion and synchronization circuitry suitable for driving a TV monitor, storage display, graphic memory, memory refreshment, or other type of optical display devices; and

(d) Parts, components, and assemblies therefor.

Note for Country Group P Only

1. Licenses are likely to be approved for export to satisfactory end-users of multispectral image processing systems having image construction not exceeding 1024x512 Pixels, image element display in 256 shades of gray or color, and a memory refresh rate of 8 megabytes per second.

XVII. Entry 1757A is amended by numbering the existing NOTE as 1 and adding a NOTE 2 reading as follows:

1757A * * *

* * * * *

Notes: 1. * * *

Note for Country Group P Only

2. Licenses are likely to be approved for export to satisfactory end-users of monocrystalline silicon wafers or ingots of 3 inches in diameter or less when doped for commercial bipolar and MOS devices.

(Secs. 5, 6, 13 and 15, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10-3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41-1 (45 FR 11862, February 22, 1980) and 41-4 (45 FR 65003, October 1, 1980))

Dated: December 23, 1981.

Bohdan Denysyk,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 81-37047 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-25-M

15 CFR Part 399

Transfer of Export Licensing Jurisdiction From NRC to OEA for Certain Forms and Amounts of Depleted Uranium: New Entries on the Commodity Control List

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule adds two new entries to the Commodity Control List of the Export Administration Regulations. The addition of these entries reflects the transfer authorized by statute of export licensing jurisdiction for certain forms and amounts of depleted uranium from the Nuclear Regulatory Commission to the Office of Export Administration.

EFFECTIVE DATE: December 29, 1981.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-4811).

SUPPLEMENTARY INFORMATION: The Office of Export Administration (OEA) maintains the Commodity Control List (CCL), which includes all commodities restricted for export except those specifically controlled for export by another department or agency of the U.S. Government. Section 110 of the International Security and Development Cooperation Act of 1980 (Pub. L. 96-533) granted OEA export licensing jurisdiction for certain forms and weight amounts of depleted uranium that were previously controlled by the Nuclear Regulatory Commission. The transfer of this licensing authority requires the addition of new entries to the CCL (Supplement No. 1 to § 399.1 of the Export Administration Regulations) to reflect new OEA jurisdiction over depleted uranium fabricated into counterweights or used as shielding against radiation in specific types of commodities. This transfer continues the control on these forms of depleted uranium for nuclear nonproliferation reasons. Also, with the concurrence of the Department of Defense, the control of this commodity for national security reasons is continued. Pursuant to section 4(c) of the Export Administration Act of 1979, it has been determined that, notwithstanding some degree of foreign availability, the absence of this control would prove detrimental to the national security of the United States.

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Adminstrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

§ 399.1 [Amended]

The Commodity Control List (Supplement No. 1 to § 399.1) is amended by adding two new entries (in numerical order, disregarding the first digit) reading as follows:

Export control commodity number and commodity description	Unit	Validated license required	GLV $ value limits T&V	Processing code	Reason for control
4698B Depleted uranium (any uranium containing less than 0.711% of the isotope U-235), the following only: shipments of more than 1000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive theremoelectric generators, or packaging for the transportation of radioactive materials.[1]	Lbs./kgs.	POSTVWYZ	0	MG	1, 4[2]
4699G Depleted uranium (any uranium containing less than 0.711% of the isotope U-235) fabricated into commodities solely to take advantage of high density unrelated to radioactivity (e.g., aircraft, ship or other counterweights); and shipments of 1000 kilograms or less in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.	Lbs./kgs.	SZ		MG	1, 4

[1] Depleted uranium in fabricated forms for use in munitions requires export authorization from the U.S. Department of State, Office of Munitions Control (See Supp. No. 2 to Part 370). All forms of depleted uranium not specifically described in entries 4698B and 4699G, and not controlled by the Department of State, require export authorization from the Nuclear Regulatory Commission (see 10 CFR Part 110).

[2] A validated license is not required for export of these commodities to Spain and the countries listed in Supps. No. 2 and No. 3 to Part 373.

(Sections 5, 6, 13 and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. section 2401 *et seq.*; Section 110, Pub. L. 96–533; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41–1 (45 FR 11862, February 22, 1980) and 41–4 (45 65003, October 1, 1980))

Dated: December 4, 1981.

William V. Skidmore,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 81–37048 Filed 12–28–81; 8:45 am]

BILLING CODE 3510–25–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Prohibition of Guarantees Against Loss

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted rule 1.56 which prohibits a futures commission merchant ("FCM") from representing that it will guarantee any person for or on behalf of which it carries a commodity interest account against loss, or that it will limit the loss of such person, of not call for or try to collect margin from that person as established by the contract markets upon which the commodity interests carried for such person's account are traded. This rule also prohibits another person from representing that an FCM will do any of the above activities. Notwithstanding the prohibition of rule 1.56, an FCM may assume, and another person may represent that an FCM will assume, financial responsibility for any loss which results from an error or from the mishandling of a customer order. An FCM may also act as the general partner in a commodity pool which is a limited partnership. Rule 1.56 only applies prospectively and thus does not affect any representation made or any guarantee agreement entered into prior to its effective date if such representation or contract is otherwise lawful under the Commission's regulations. The rule does, however, apply to any extension, renewal or modification of such an existing agreement. Adoption of this rule is intended to prohibit a recently emergent practice among FCMs which, if unchecked, could undermine the effectiveness of the Commission's segregation rules and could subvert the primary purpose of margin to such firms' financial detriment.

EFFECTIVE DATE: January 28, 1982.

FOR FURTHER INFORMATION CONTACT: Suzanne W. Ryder, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. *Background.* On February 10, 1981, the Commission published proposed rule 1.56. (46 FR 11668) In response to the proposal, the Commission received eighteen [1] comment letters: Seven from FCMs; [2] four from boards of trade; one from a trade association; two from lawyers and one from a non-profit, "public interest" law firm; one from a commodity pool operator ("CPO") which is also an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940; one from a certified public accounting firm; and one from a commodity futures customer.[3]

[1] One of the commentators sent two separate letters, each of which has been counted in the total.

[2] One of the commentators is registered with the Commission as an FCM and as a commodity trading advisor ("CTA"). For purposes of this summary, that firm has been treated as having commented in its capacity as an FCM.

[3] In addition, the Commission received several Congressional inquiries about the proposal requesting information on behalf of constituents, all of whom were employees of one of the commentators. These inquiries were made a part of the administrative record and the views expressed in the letters were considered by the Commission

Continued

B. *Major Difference between Proposed and Final rule.* The Commission has carefully considered all of the comments received in response to the proposed rule, and as a result has determined to adopt a modified version. Although a significant number of commentators strongly supported the basic objective of the Commission's proposal, specifically the prevention of representations by an FCM that it will guarantee customers against loss, there was disagreement as to the necessity of paragraph (c) of the proposal. As proposed, this paragraph would have made each FCM responsible for ensuring that its customers deposit initial and maintenance margin within a reasonable time, and thereafter maintain margin, in an amount equal to that established by the applicable contract market for contracts made or executed thereon.[4] As such, it was designed to meet the Commission's concern that any rule prohibiting an FCM from making guarantees could be circumvented by a firm representing to its customers that it would not call for or collect margin. In response to the concerns of the commentators, the rule, as adopted, eliminates the requirement proposed in paragraph (c). As adopted the rule will only prohibit an FCM from representing that it will not call for or collect margin. The Commission wishes to make clear that this prohibition applies equally to non-member as well as member FCMs. In addition, this provision should not be read to prevent the collection of margin in excess of that established by the applicable board of trade. The Commission intends that the prohibition on representations contained in the final rule apply equally to oral and written representations made in connection with soliciting funds or accounts and to contractual representations made in an oral or written agreement.

II. Analysis of the Comments

As explained more fully in its proposal, the Commission believes that the use of limited-risk and guarantee-against-loss agreements has often been associated with patterns of allegedly unlawful conduct by FCMs or other registrants or with the financial instability of such persons.[5]

Several commentators concurred in the Commission's analysis of the risks posed by these types of agreements. Of these commentators, many indicated that they considered the giving of guarantees to be an irresponsible and unsound business practice. These commentators pointed out that an FCM which agrees to absorb customer deficits is placed in constant jeopardy of becoming undercapitalized and of being forced into bankruptcy as a result unless it is extremely well capitalized, and further, that the FCMs likely to offer such contracts are generally the less well-capitalized firms. In fact, in two of the recent FCM insolvencies monitored by the Commission, the use of guarantees was apparently a significant contributing factor.[6]

Commentators also agreed with the Commission's view that the practice of assuming customer losses increases the risk that customer segregated funds will be misused. One commentator even suggested that guarantees and other such practices are inherently deceptive because an FCM which offers the same would never intentionally allow the loss limitations to operate but would either impose much higher commission charges or would seek to liquidate guaranteed accounts while there was equity in them.

Opposition to the prohibition on limited-risk agreements and guarantees-against-loss came essentially from two parties [7] which offered the following reasons for their position: (1) Existing regulations provided sufficient protection for customer funds; (2) alternatives short of a ban would accomplish the same result; (3) such a prohibition placed the Commission in the position of appearing to favor indeterminate loss for customers; and (4) the proposal was anti-competitive.

The Commission finds that weighed against the wide-spread support for the proposed ban on limited-risk agreements, the arguments asserted by these few commentators are not compelling for the following reasons. First, as the Commission noted in its proposal,[8] the practice which rule 1.56 prohibits may not in all cases constitute a violation of the antifraud provision of the Commodity Exchange Act ("Act") [9] or the Commission's segregation regulations.[10] Opponents to the rule have argued that if a particular activity arising out of the use of limited-risk agreements was fraudulent or if the segregation rules were actually violated, the Commission could, at that point, address the problem by an appropriate enforcement proceeding. However, the Commission believes that to intervene at that point would be too late. Indeed, a primary purpose of this rule is early intervention—to provide the Commission a basis for interceding before irreparable loss is incurred or customer funds are impaired. The Commission believes that this prophylactic approach is appropriate in view of the likelihood of harm resulting from the practices the rule prohibits.

Second, the Commission does not believe that, as some commentators have suggested, the imposition of higher capital and/or segregation requirements for those FCMs which have entered into limited-risk agreements with customers is a viable alternative. It would be extremely difficult to quantify the amount of risk to which an FCM would be exposed with respect to each particular trade, and further, the number of limited-risk agreements carried by an FCM would fluctuate constantly. In some cases, the risk could even exceed the full face value of the commodity contracts covered by such a guarantee.

Third, although the Commission clearly does not favor customer loss, the Commission believes that the risks of the marketplace should not be obscured to the potential detriment of customers.[11] Even if an FCM agrees to

but are not included in the total. Similar treatment was accorded a letter received by the Division of Trading and Markets concerning an unrelated matter, but which discussed problems in a recent bankruptcy caused by the use of limited-risk agreements.

[4] Proposed paragraph (c) read:

Each futures commission merchant must require that each customer for which it carries an account containing any commodity interest which is traded or executed on a contract market be obligated for and deposit within a reasonable time, and thereafter be obligated for and maintain, money, securities or property to margin, guarantee or secure such commodity interest in an amount or value not less than the applicable initial and maintenance margin requirement of such contract market.

46 FR at 11672.

[5] *Id.* at 11669.

[6] Incomco, Inc. filed a voluntary petition in bankruptcy on August 1, 1980 and had marketed commodities using a "managed accounts program" in which customer liability was limited. Approximately 20% of Incomco's accounts were of this kind, and approximately 70% of these accounts were in deficit as of August 1, 1980 based on a Commission interim audit of Incomco. On November 4, 1980, another commodity broker, Chicago Discount Commodity Brokers ("CDCB"), filed a voluntary petition in bankruptcy. According to a March 11, 1981 communication from the trustee in bankruptcy, there was evidence of CDCB guarantees of account debit balances which the trustee believed to be one of several factors contributing to that firm's failure.

[7] One of these commentators is a firm which currently offers a form of limited-liability trading. This firm, itself, sent two letters; several of its employees also sent letters; an attorney on retainer to this firm sent a separate comment; and, in addition, a company which recently took over some of the offices and clients of the firm commented on the proposal.

[8] 46 FR at 11669–70.

[9] Section 4b of the Act, 7 U.S.C. 6b (1976).

[10] Commission regulations 1.20–1.30, 46 FR 54500, 54518–20 (Nov. 3, 1981), and Commission regulation 32.6, 17 CFR 32.6 (1981).

[11] In addition, rule 1.56 will not affect currently available commodity investments which limit the risk to which a customer is exposed but which do

Continued

limit its customer's losses, it is the Commission's view that such losses may ultimately be borne by such customers, or by other customers adversely affected by the uncollectibility of deficits in an ensuing bankruptcy proceeding.[12]

Fourth, although the practice of guaranteeing customer accounts may in some cases force an FCM to act more conservatively than it would otherwise by collecting higher margin, this is accomplished only by relinquishing the financial cushion of variation and maintenance margin. When the customer will lose money if his position is not liquidated, out of self-interest he will be inclined to exercise prudence in his trading decisions. If, however, a customer is permitted to shift the risk of his losses onto the FCM, not only is the firm exposed to losses it may not have adequately protected against, but other customers whose accounts may not be so guaranteed are subjected to an extra risk of loss of which they are probably not aware.[13]

Finally, in response to the suggestion that the rule would disproportionately affect smaller more innovative firms, the Commission notes that although it must of course consider the effect on competition of any rule it adopts and must endeavor to take the least anti-competitive approach, Section 15 of the Act does not require the Commission to in fact take the least anti-competitive approach.[14] The Commission must also strive to carry out the objectives of the Act as well as its underlying policies and purposes.[15] One of the fundamental concepts contained in the Act is the protection accorded customer funds by the application of the principle of segregation of customer funds.[16] Equally basic to the overall statutory scheme is that FCMs must at all times be in compliance with the financial requirements prescribed by the Commission.[17] Thus, when a particular practice could significantly impair either of these two elements of the overall regulatory program, the Commission has determined that it may proscribe such practice even if there are incidental anti-competitive effects. In addition, the newer, smaller firms which may feel competitively disadvantaged by the Commission's action generally have smaller reserves of capital than the larger, more established FCMs and therefore are precisely those firms which are least able to absorb the losses arising from any guarantee provided their customers.

The Commission also received one very specialized comment which it wishes specifically to address. That comment, made by a firm which is registered with the Commission as a CPO and is also registered with the Securities and Exchange Commission ("SEC") as an investment company, was that compliance by it with the Commission's prohibition would be a violation of Section 18 of the Investment Company Act of 1940 ("1940 Act").[18] The Commission disagrees with this analysis for several reasons. First, as proposed and as adopted, the rule exempts existing guarantee agreements from the ban and therefore the company's current non-recourse agreement with an FCM would not be affected. Furthermore, the Commission does not understand section 18 of the 1940 Act to require an investment company to enter into a non-recourse agreement with the FCM through which it purchases commodity futures contracts although such an agreement may be one way to satisfy the requirements of that section.[19] Moreover, rule 1.56 concerns activities over which the Commission has exclusive jurisdiction.

III. Scope of Final Rule

As proposed and as adopted, regulation 1.56 would prohibit an FCM from representing that it will guarantee any person against loss with respect to any commodity interest, including without limitation commodity interests which are futures, commodity options, and leverage contracts.[20] Also as proposed, the prohibition extends to commodity interests held by an FCM for or on behalf of any person and, as such, would apply to proprietary as well as customer accounts.[21] The **Federal Register** release accompanying the proposed rule indicated that it was not intended to prevent and FCM from participating as a general partner in a commodity pool which is a limited partnership.[22] The Commission agrees with the suggestion of some commentators that this exception should be contained in the rule itself, and therefore, a statement to that effect has been added to the final rule.[23]

The Commission wishes to confirm the point made by one commentator that the rule only applies to the legal or equitable owner of an account for losses in that account, and does not apply to guarantees given to third parties which do not relieve the owner of the account of any liability to the FCM. Further, as noted in the proposal, rule 1.56 is not intended to affect Commission rule 1.30 which, subject to certain conditions and procedures, permits an FCM to make loans to commodity customers secured by securities or property pledged by such customers.[24]

IV. Certification Under Regulatory Flexibility Act

In the proposal, the Chairman certified, pursuant to the Regulatory Flexibility Act, that if rule 1.56 were promulgated as proposed, it would not have a significant economic impact on a substantial number of small entities. However, the Commission specifically invited comment from any small firms which thought they would be significantly affected.[25]

One commentator responded that, consistent with the Senate Report accompanying the bill later enacted into

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not expose the firm offering such investments to undue risks. For example, certain types of commodity pool investments are limited-risk investments. Moreover, the Commission's recently approved pilot program permitting exchange-traded options on futures also permits a limitation on the customer's exposure to loss. *See* 46 FR 54500 (Nov. 3, 1981).

[12] In a futures commission merchant bankruptcy, customer funds are distributed pro rata, and hence any shortfall is borne pro rata. 11 U.S.C. 766(h) (Supp. III 1979). *See also* 46 FR at 11669 for a discussion of the effect of such agreements on the general creditors of a debtor FCM.

[13] For example, in the recent bankruptcy of an FCM, the Commission learned that the customers of one CTA which managed accounts for some of the FCM's customers were not given guarantees while the customers of another CTA were. The deficits incurred by the customers with guarantees were illegally paid out of funds segregated for all customers. However, these payments were concealed in the statements sent to the CTA whose customers did not receive guarantees. Thus, the customers without guarantees unknowingly bore the losses of those customers given guarantees, and as there is a shortfall in the segregated funds, the customers without guarantees will not be reimbursed.

[14] 7 U.S.C. 19 (1976).

[15] *See, e.g., id.* and Section 8a(5) of the Act, 7 U.S.C. 12a(5) (1976).

[16] Section 4d(2), 7 U.S.C. 6d(2) (Supp. III 1979).

[17] Section 4f(2), 7 U.S.C. 6f(2) (1976).

[18] 15 U.S.C. 80a-18 (1976).

Although the Commission is aware of other pools which are so registered, this same objection was not raised by any other commentator.

[19] An interpretative release issued by the SEC in connection with Section 18 of the 1940 Act provides that non-compliance with Section 18 will not be charged if companies registered under the 1940 Act adopt certain practices, none of which involve the use of non-recourse agreements. SEC Interpretative Release, "General Statement of Policy Regarding Securities Trading Practices of Registered Investment Companies," Release No. IC-10666, 44 FR 25128 (April 18, 1979), [1980] 5 Fed. Sec. L. Rep. (CCH) ¶48,525.

[20] *See* 1.56(a).

[21] These terms are defined in sections 1.3(y) and 1.3(k) of the Commission's regulations, respectively. 17 CFR 1.3(y) (1981), *as amended by* 46 FR 54500, 54515 (Nov. 3, 1981), and 17 CFR 1.3(k) (1981).

[22] 46 FR at 11671.

[23] *See* 1.56(d)(2).

[24] 46 FR at 11669.

[25] *Id.* at 11671.

law as the Regulatory Flexibility Act, an analysis of the extent of economic impact should include a study of the dispersion of that impact with respect to investors' access to the markets as well as of the rule's impact on businesses. The Commission disagrees with this view because, although the Senate Report does contain references to the impact of regulations upon individuals, as enacted, the Regulatory Flexibility Act speaks in terms of small entities, small businesses, small organizations and small governmental jurisdictions and does not include non-entrepreneurial individuals.[26]

As noted above, a few commentators stated that the proposed regulation would have a detrimental effect on smaller FCMs because they are more likely to offer limited-risk trading as a means of competing with the larger, more established firms. The Commission believes that any competitive disadvantage to a small FCM is *de minimus* compared to the damage to small FCMs and their customers that the Commission has observed as a result of the practices the Commission is now prohibiting. In addition, the Commission believes that there is no satisfactory alternative to the rule which would as effectively accomplish the objectives and policies of the Act. Finally, the comments received by the Commission do not indicate that the Commission was incorrect in its estimate that a relatively small number of firms engage in such practices.[27]

For all of the above reasons, pursuant to Section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1168 (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 4b, 4d, 4f, and 8a of the Act, as amended, 7 U.S.C. 6b, 6d, 6f and 12a (1976 & Supp. III 1979), the Commission hereby revises Chapter I of Title 17 of the Code of Federal Regulations by adding § 1.56. In adopting this rule, the Commission has taken into consideration the public interest to be protected by the antitrust laws and has endeavored to take the least anti-competitive means of achieving the regulatory objectives of the Commodity Exchange Act.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

Chapter I of 17 CFR is revised by adding a new § 1.56 to read as follows:

§ 1.56 Prohibition of guarantees against loss.

(a) For purposes of this section "commodity interest" means

(1) Any contract for the purchase or sale of a commodity for future delivery; and

(2) Any contract, agreement or transaction subject to Commission regulation under sections 4c or 19 of the Act.

(b) No futures commission merchant may in any way represent that it will, with respect to any commodity interest in any account carried by the futures commission merchant for or on behalf of any person:

(1) Guarantee such person against loss;

(2) Limit the loss of such person; or

(3) Not call for or attempt to collect initial and maintenance margin as established by the rules of the applicable board of trade.

(c) No person may in any way represent that a futures commission merchant will engage in any of the acts or practices described in paragraphs (b) (1), (2) or (3) of this section.

(d) This section shall not be construed to prevent a futures commission merchant from:

(1) Assuming or sharing in the losses resulting from an error or mishandling of an order; or

(2) Participating as a general partner in a commodity pool which is a limited partnership.

(e) This section shall not affect any guarantee entered into prior to [the effective date of this section], but this section shall apply to any extension, modification or renewal thereof entered into after such date.

Issued in Washington, D.C. on December 22, 1981 by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-36960 Filed 12-28-81; 8:45 am]

BILLING CODE 6351-01-M

[26] *Compare* S. Rep. No. 96-878, 96th Cong., 2d Sess. 14 (1980) *with* Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1980).

[27] It should be noted that the prohibition of rule 1.56 pertains primarily to FCMs and that in a **Federal Register** release published subsequent to its rule 1.56 proposal, the Commission proposed to exclude registered FCMs from the definition of the term "small business" for purposes of applicability of the Regulatory Flexibility Act to Commission rulemaking. 46 FR 23940, 23941 (April 29, 1981).

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chs. V and VI

29 CFR Chs. V, XVII, and XXV

41 CFR Ch. 60

Display of Office of Management and Budget Control Numbers for Recordkeeping Requirements

AGENCY: Office of the Secretary, Labor.

ACTION: Technical amendments.

SUMMARY: This document amends the Department of Labor regulations to include OMB control numbers at the places in the regulations where current information collection requirements are described. It also removes obsolete references to previous GAO and OMB approvals of information collection requirements.

EFFECTIVE DATE: December 29, 1981.

FOR FURTHER INFORMATION CONTACT: Paul Larson, Director, Office of Management Reports and Analysis, Directorate of Management Policy and Systems, Room S-5526, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone 202-523-6331.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control numbers contained in the listing.

Guide to Agency Abbreviation Code

BLS—Bureau of Labor Statistics
ESA—Employment Standards Administration
ETA—Employment and Training Administration
LMSA—Labor-Management Services Administration
MSHA—Mine Safety and Health Administration
OSHA—Occupational Safety and Health Administration

Text of Amendments

Following the text of each paragraph cited in the second column of the table, add parenthetically the corresponding OMB number listed in the third column:

Agency	Regulatory citation	OMB No.
BLS	29 CFR 1904.2	1220-0029
	29 CFR 1904.4	1220-0029
	29 CFR 1904.5	1220-0045
ESA	29 CFR 516 Subpart A and B	1215-0017
	20 CFR 702.111	1215-0117
	29 CFR 575.3	1215-0120
	41 CFR 60-1.7(a)(3), 60-1.40, 60-140, 60-250.52, 60-741.52, 60-250.53, 60-741.53, 60-4.3, 60-250.5, 60-741.5, 60-250.26, and 60-741.26.	1215-0072
ETA	20 CFR 653.103, 653.106, 653.107, 653.108, 653.109, 653.111, 653.112, 653.501, 653.503.	1205-0039
	20 CFR 658.410 and 658.413	1205-0039
LMSA	29 CFR 2520.101 and 2520.104	1210-0016
OSHA	29 CFR 1910.95	1218-0048
	29 CFR 1910.96(n)	1218-0010

Signed at Washington, D.C., this 23rd day of December 1981.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 81-37105 Filed 12-28-81; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 79N-0408]

General Biological Products Standards; Pyrogen Test Requirements

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to conform with the requirements of the latest revision of the Pyrogen Test appearing in the United States Pharmacopeia (U.S.P.) XX which became official on July 1, 1980. There is no substantive change in the requirements or procedures of this test. The agency is also amending the regulations to clarify that the requirement for testing each lot of a product for pyrogenic substances means testing of the product when packaged in final containers and not as bulk material; and to permit the use of a different test for pyrogenic substances equal or superior to the U.S.P. test provided that such test has been approved for use by the Director, Bureau of Biologics.

EFFECTIVE DATE: January 28, 1982.

FOR FURTHER INFORMATION CONTACT: Richard E. Fisher, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 14, 1980 (45 FR 75229), FDA proposed to amend the biologics regulations in § 610.13(b)(2) (21 CFR 610.13(b)(2)) to refer the requirements of the Pyrogen Test of the current edition of the U.S.P. The agency also proposed to amend § 610.13(b) to clarify that the requirement for testing each lot of a product for pyrogenic substances means testing of the product when packaged in final containers and not as bulk material; and § 610.13(c) to permit the use of a different test for pyrogenic substances equal or superior to the U.S.P. test, provided that the test has been approved for use by the Director, Bureau of Biologics.

The proposed rule stated that, in order to simplify and shorten the regulation and to expedite FDA's regulation development process, the agency has determined that it is appropriate to incorporate these revised procedures by reference rather than to reprint them.

Interested persons were given until January 13, 1981 to submit written comments regarding the proposal. The one comment that was received supported the proposed change. The comment stated that this action "is a positive step which (the comment) supports". The comment suggested, however, that under proposed § 610.13(c), if a different test is used, the rabbit test appearing in U.S.P. XX should serve as the referee test for pyrogenicity.

FDA advises that because the rabbit test is the only test for pyrogenic substances appearing in U.S.P. XX, it is therefore the official test for pyrogenic substances and would automatically serve as the referee test for pyrogenicity when a different test for pyrogenicity is used in accordance with § 610.13(c).

Accordingly, FDA is adopting the proposed rule as originally published.

The economic impact of this rule has been assessed in accordance with Executive Order 12291. This rule in not a "major rule" as defined by that Order. Specifically, this rule, to incorporate the requirements of the pyrogen test as specified in U.S.P. XX, will not have a significant impact on the economy or the availability of biological products, nor cause a major increase in costs for manufacturers, physicians, or consumers. The assessment that led to the determination that this is not a "major rule" is available from 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.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 610 is amended in § 610.13 by revising the introductory text of paragraph (b), and by revising paragraphs (b)(2) and (c) to read as follows:

§ 610.13 Purity.

* * * * *

(b) *Test for pyrogenic substances.* Each lot of final containers of any product intended for use by injection shall be tested for pyrogenic substances by intravenous injection into rabbits as provided in paragraph (b) (1) and (2) of this section: *Provided,* That notwithstanding any other provision of Subchapter F of this chapter, the test for pyrogenic substances is not required for the following products: Products containing formed blood elements; Cryoprecipitated Antihemophilic Factor (Human); Single Donor Plasma (Human); Source Plasma (Human); Normal Horse Serum; bacterial, viral, and rickettsial vaccines and antigens; toxoids; toxins; allergenic extracts; venoms; diagnostic substances and trivalent organic arsenicals.

* * * * *

(2) *Test procedure, results, and interpretation; standards to be met.* The test for pyrogenic substances shall be performed according to the requirements specified in United States Pharmacopeia XX.

(c) *Different tests equal or superior.* A different test for residual moisture or pyrogenic substances may be performed provided that prior to its performance the manufacturer submits data which the Director, Bureau of Biologics finds adequate to establish that the different test is equal or superior to the test described in paragraph (a) or (b) of this section and makes the finding a matter of official record.

Effective date. This regulation becomes effective on January 28, 1982.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: December 2, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-36684 Filed 12-28-81; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Postmastectomy Reconstructive Breast Surgery; Correction

AGENCY: Department of Defense.

ACTION: Correction of Amendment of Final Rule.

SUMMARY: This corrects Amendment No. 9 to DoD Regulation 6010.8-R (32 CFR 199) which implements the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). This correction deletes the unintentional requirement for preauthorization prior to postmastectomy reconstructive breast surgery and corrects a typographical error. The correction will reduce the administrative requirements for beneficiaries desiring postmastectomy reconstructive breast surgery by eliminating the need for preauthorization from the Office of CHAMPUS and will identify the subparagraph that was erroneously changed.

EFFECTIVE DATE: This correction is retroactively effective to services rendered on or after October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Charles M. Gallegos, Chief, Policy Branch, OCHAMPUS, telephone (303) 361-8608.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

Amendment No. 9, published in the **Federal Register** on November 10, 1981 (46 FR 55515), authorized benefits for postmastectomy reconstructive breast surgery when the mastectomy was performed as a result of carcinoma, fibrocystic disease, other nonmalignant tumors, or traumatic injuries. However, the placement of this benefit in the CHAMPUS Regulation unintentionally subjected it to the same preauthorization requirement as all other reconstructive, cosmetic, and plastic surgery.

The intent was not to require preauthorization for the post-mastectomy reconstruction procedure included as a benefit in Amendment No. 9. However, language to make an exception to this requirement for this procedure was erroneously omitted when the amendment was submitted for publication in the **Federal Register.**

As a result, this correction will revise the language to specify that preauthorization is not required for post-mastectomy reconstructive breast surgery as outlined in Amendment No. 9.

Additionally, when the amendment was submitted there was a typographical error which identified an incorrect paragraph for change. The existing paragraph (e)(8)(ii)(*c*) in Section 199.10 was deleted in error and a new subparagraph was added. While the language of the subparagraph was correct, it should have been identified as paragraph (e)(8)(ii)(*d*).

PART 199—IMPLEMENTATION OF THE CIVILIAN AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

Accordingly, 32 CFR, Chapter I is corrected reading as follows:

Section 199.10 is corrected as follows:

a. By correcting the designation in paragraph (e)(8)(ii)(*c*) as submitted incorrectly in Amendment No. 9 to paragraph (e)(8)(ii)(*d*). As corrected, paragraphs (e)(8)(ii) (*c*) and (*d*) read as set forth below.

b. By removing the existing paragraph (e)(8)(iv) and adding a new paragraph (e)(8)(iv).

§ 199.10 Basic program benefits.

* * * * *

(e) * * *

(8) * * *

(ii) * * *

(*c*) Procedures performed for elective correction of minor dermatological blemishes and marks or minor anatomical anomalies are also excluded.

(*d*) In addition to whether or not they would otherwise qualify for benefits under paragraph (e)(8)(i) of this section, the breast augmentation mammoplasty (except as specifically authorized in (e)(8)(i)(d) of this section), surgical insertion of prosthetic testicles and the penile implant procedure are specifically excluded.

(*e*) * * *

(8) * * *

(iv) *Preauthorization required.* In order for CHAMPUS benefits to be extended for cosmetic, reconstructive and plastic surgery procedures which might qualify under paragraph (e)(8) of this section, preauthorization is required from the Director, OCHAMPUS (or a designee), except for reconstructive breast surgery following a medically necessary mastectomy performed for the treatment of carcinoma, fibrocystic disease, nonmalignant tumors, or traumatic injuries.

* * * * *

(10 U.S.C. 1086, 5 U.S.C. 301)

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 21, 1981.

[FR Doc. 81-36951 Filed 12-28-81; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 958

Amendment of Rules of Practice in Proceedings Relative to the Refusal To Rent or Renew Post Office Boxes (or Extend Caller Service) and the Closing of Post Office Boxes (or Termination of Caller Service)

AGENCY: Postal Service (Judicial Officer).

ACTION: Final rule.

SUMMARY: The Postal Service recently adopted amended procedures, to be effective January 17, 1982, for determining whether post office box or caller service should be refused or terminated. These new procedures, which are in 951 and 952 of the Domestic Mail Manual, were designed to simplify and expedite the entire determinative process by increasing the authority of local postmasters, requiring notice to every unsuccessful applicant for service, providing alternative methods for notifying customers of adverse determinations and for filing petitions for review, and establishing practical time limits for required action.

The adoption of these new procedures requires conforming revision of the Rules of Practice governing review by the Judicial Officer Department. Moreover, the new procedures' potential for increasing the number of cases to be reviewed may require expanded use of summary judgment, upon the motion of either party or the presiding officer's own initiative, to dispose of cases lacking genuine or material issues of fact. Consequently, it appears appropriate to describe this summary method of disposition in the Rules of Practice to enhance petitioners' awareness of it.

EFFECTIVE DATE: January 17, 1982.

FOR FURTHER INFORMATION CONTACT: John F. Ventresco, (202) 245-4385.

SUPPLEMENTARY INFORMATION: Acting in accordance with the authority delegated to him by 39 CFR 224.1(c)(4)(ii)(D), the Judicial Officer of the Postal Service

adopts amendments of 39 CFR Part 958 as outlined above in the Summary. The effective date is delayed to coincide with the effective date of the amendments to the Domestic Mail Manual, which were published in the Federal Register at 46 FR 61460.

Accordingly, 39 CFR is amended as follows:

1. The heading of Part 958 is revised to read as follows:

PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE REFUSAL TO PROVIDE POST OFFICE BOX OR CALLER SERVICE AND THE TERMINATION OF POST OFFICE BOX OR CALLER SERVICE

2. Section 958.2 is revised to read as follows:

§ 958.2 Scope of rules.

The rules in this part shall be applicable to cases in which a postmaster has issued a Determination denying an application for post office box or caller service, or terminating the box or caller service being provided to a customer, and in which a Petition in opposition to that Determination has been filed.

3. Section 958.3 is revised to read as follows:

§ 958.3 Petition; notice of hearing; answer; summary judgment.

(a) *Petition.* Any applicant or customer who receives a postmaster's Determination may oppose it by filing, in triplicate, a written Petition stating his reasons for opposing the Determination. The Petition, signed by the Petitioner or his attorney, shall be filed by sending the Petition via certified mail to the postmaster who issued the Determination, or by otherwise delivering it to the postmaster's office. The Petition must be filed within twenty days (Sundays and holidays included) after the date on which the Petitioner received the Determination. The postmaster shall immediately forward two copies of the Petition to the Recorder, Judicial Officer Department, U.S. Postal Service, Washington, D.C. 20260–6100.

(b) *Notice of hearing.* On receipt of the Petition, the Recorder shall schedule a hearing on a date not later than 30 days after the date of receipt. A Notice of Hearing shall be sent to the Petitioner. A copy of the Notice of Hearing and the Petition shall be sent to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel of the Postal Service shall file an Answer to the Petition within fifteen days after the date the General Counsel received a copy of the Petition from the Recorder.

(d) *Summary judgment.* Upon motion of either the General Counsel or the Petitioner, or on his or her own initiative, the presiding officer may find that the Petition and Answer present no genuine or material issues of fact requiring an evidentiary hearing and may thereupon render an initial decision granting or dismissing the Petition. The initial decision shall become the final agency decision if a timely appeal is not taken.

(39 U.S.C. 204, 401(2))

W. Allen Sanders,

Associate General Counsel, General Law and Administration.

[FR Doc. 81-36870 Filed 12-28-81; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL-1990-4]

Approval and Promulgation of Implementation Plans; Approval of Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The State of Maryland has submitted for EPA approval a revision of the Maryland State Implementation Plan. The revision consists of a Secretarial Order for the Reading-Whitehall Paperboard Company, Baltimore County, Maryland. The Order allows the company to burn 2.0 percent sulfur residual fuel oil at its Whitehall facility contrary to requirements of the Maryland Code (COMAR 10.18.09.07A(2)(c)) for a period of two years beginning September 22, 1981, and grants the company a permit to construct a more fuel efficient steam boiler of larger capacity. EPA is considering only the change to 2.0 percent sulfur fuel oil.

EFFECTIVE DATE: This action will be effective on March 1, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision and the accompanying documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Curtis Building, 10th Floor, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: Patricia Sheridan

State of Maryland, Air Management Administration, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201, ATTN: Mr. George Ferreri

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street SW (Waterside Mall), Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20405

All comments should be addressed to: Henry J. Sokolowski, P.E. (3AH12), Chief, MD–DE–DC Metro Section, U.S. Environmental Protection Agency, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: AH032MD.

FOR FURTHER INFORMATION CONTACT: Edward A. Vollberg (3AH12), U.S. Environmental Protection Agency, 6th & Walnut Streets, Philadelphia, PA 19106, Telephone (215) 597–8990.

SUPPLEMENTARY INFORMATION: On September 21, 1981, the Director of the Air Management Administration for the State of Maryland submitted to EPA, Region III, a proposed revision of the Maryland State Implementation Plan. The proposed revision consists of a Secretarial Order for the Reading-Whitehall Paperboard Company, Baltimore County, Maryland.

The Secretarial Order allows the company to burn 2.0 percent sulfur residual fuel oil at its Whitehall facility for a period of two years beginning September 22, 1981. COMAR 10.18.09.07A(2)(c) limits the sulfur content of residual fuel oil burned to 1.0 percent by weight. The Order also grants the company a permit to construct a 45.7 million British Thermal Units (BTU) per hour residual oil fired steam boiler to replace the existing 33 million BTU/hour boiler. EPA is considering only the use of 2.0 percent sulfur fuel oil. The State of Maryland's permitting regulations are already part of the approved SIP, therefore, EPA need not act upon individual permits.

EPA has reviewed the Secretarial Order and supporting documentation submitted by the State of Maryland. The impacts predicted by the air quality demonstration do not violate the PSD increments or the National Ambient Air Quality Standards. The modeling analysis is consistent with EPA's guidelines and therefore satisfactorily supports the provisions of the exception.

The public is advised that this action will be effective March 1, 1982. However, if notice is received within 30

days that someone wishes to submit adverse or critical comments, this action will be withdrawn and subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under sections 107 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1981). This action constitutes a SIP approval under sections 107 and 172 within the terms of the January 27 certification. This action only approves State actions. It imposes no new requirements.

Under section 307(b)(1) of the Clean Air Act, judicial review of these actions is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of publication of this notice.

(42 U.S.C. 7401–642)

Dated: December 8, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Title 40, Code of Federal Regulations is revised as follows:

Subpart V—Maryland

Section 52.1070 is amended by adding a new paragraph (c)(55) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(55) A revision submitted by the State of Maryland on August 7, 1981 consisting of an exception to COMAR 10.18.09.07A(2)(c) for the Reading-Whitehall Paperboard Company.

[FR Doc. 81-36054 Filed 12-28-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A–5–FRL 1997–6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On April 30, 1981, Ohio submitted as a revision to its State Implementation Plan (SIP), an alternative emission control program "bubble" for total suspended particulate (TSP) emissions from the Owens-Corning Fiberglas Corporation plant in Newark, Ohio. EPA is approving these alternative emissions limits. This action will be effective on March 1, 1982 unless notice is received within 30 days that someone wishes to submit comments on it.

EFFECTIVE DATE: This final rulemaking is effective as of March 1, 1982.

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

Copies of the State's SIP revision request is available for inspection at the following addresses: (It is recommended that you telephone Robert B. Miller at (312) 886–6031 before visiting the Region V Office).

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

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

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air Programs Branch, Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On April 30, 1981, Ohio submitted as a revision to its SIP revised emission limits for the Owens Corning Fiberglas Corporation plant in Newark, Ohio. Newark is an attainment area for TSP.

The revised limits are as follows:

Process	Pounds of TSP/hour	
	Previous limits	New limits
Aerocor Furnaces 11, 14, 15 and 16 (for all 4 combined)	12.78	2.0
Aerocor Forming 11	9.11	15.0
Aerocor Forming 14	4.89	9.5
Aerocor Forming 15	4.89	9.5
Aerocor Forming 16	4.91	9.5
Aerocor Forming A–3	4.89	9.5
Glass Fiber Forming B–4	18.59	18.6
Fibrous Glass Forming C–4	21.72	15.4
Glass Fiber Forming D–5	18.17	12.9
Glass Fiber Forming D–6	17.96	13.0
Fibrous Glass Forming F–5	23.49	17.0
Fibrous Glass Forming F–6	23.49	15.8
Totals	164.88	147.7

The compliance schedule with these emission limits requires that physical changes in the Aerocor Furnaces be completed by April 30, 1981 and the furnaces be in final compliance with the revised emission limits by May 31, 1981. All of the sources are in compliance except the D–6 Forming line, which has experienced unexpected difficulties. It is anticipated that the D–6 Forming line will be in compliance by December 31, 1981.

Total emissions under the revised emission limits will be 89% of those allowed under the present EPA approved SIP. A dispersion modeling analysis was performed which shows that the TSP National Ambient Air Quality Standards (NAAQS) are protected under the revised emission limits.

Therefore, EPA is approving as a revision to Ohio's SIP the revised emission limits for the Owens-Corning Newark plant because these changes will not interfere with the maintenance of the NAAQS. The Newark area has already attained the standards.

In order to expedite Federal rulemaking, EPA is approving today's action without prior proposal. The public is advised that this action will be effective March 1, 1982. However, if notice is received by EPA within 30 days that someone wishes to submit comments on today's action, the action will be withdrawn and a subsequent notice will be published before the effective date. The notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and a comment period.

Pursuant to the provisions of 5 U.S.C. section 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities, because it only approves emission limits for a single source. Furthermore, this action only approves a State action. It will impose no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the

requirement of a Regulatory Impact Analysis. Today's action is not Major because it only approves a State action and does not impose any additional requirements in and of itself.

If no comments are received on today's action and it, therefore, becomes final, judicial review of this action under Section 307(b)(1) of the Clean Air Act is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from today. If comments are received on today's action, as discussed earlier, EPA will withdraw its final approval and propose today's action for public comment. Under these circumstances, a petition for review must then be filed within 60 days from the date of EPA's ultimate final rulemaking. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1981.

(Sec. 110 of the Clean air Act, as amended)

Dated: December 21, 1981.

Anne M. Gorsuch,

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:

1. Section 52.1870 is amended by reserving paragraphs (c)(35) and (c)(36) and adding paragraph (c)(37) as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(35) Reserved

(36) Reserved

(37) On April 30, 1981 Ohio submitted revised TSP emission limits for the Owens-Corning Fiberglas plant in Newark, Ohio.

* * * * *

[FR Doc. 81-37098 Filed 12-28-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-3-FRL-2003-4]

Approval of a Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On May 18, 1981, the Commonwealth of Pennsylvania submitted a proposed revision to its State Implementation Plan (SIP) which provides for attainment of the Total Suspended Particulate (TSP) National Ambient Air Quality Standards (NAAQS) in the area around Neville Island (the North Boroughs area) in Allegheny County, and establishes an alternative emission reduction plan (bubble) at the Shenango, Inc., Coke and Iron Works (Shenango) facility on Neville Island. The revision was developed in accordance with EPA's Bubble Policy as published in the **Federal Register** on December 11, 1979 (44 FR 71789) and other applicable SIP requirements. The plan allows the trade-off of cast-house fugitive particulate emissions for particulate emissions from roads and parking areas within the plant boundaries. Control of emissions from roads and parking areas will result in a net air quality benefit while costing much less than traditional cast-house controls.

The Environmental Protection Agency (EPA) invited public comment on this revision in a **Federal Register** notice of September 8, 1981 (46 FR 44786).

This notice announces the Administrator's approval of the revision of the Pennsylvania SIP for Allegheny County.

EFFECTIVE DATE: January 28, 1982.

ADDRESSES: Copies of the SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Media and Energy Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, Attn.: Gregory Ham (3AH11)

Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120, Attn.: Gary L. Triplett

Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-Ninth Street, Pittsburgh, PA 15201

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

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW (Waterside Mall), Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. David L. Arnold, U.S. Environmental Protection Agency, Region III, Air Media and Energy Branch, Curtis Building, 10th Floor, 6th & Walnut Streets, Philadelphia, PA 19106.

SUPPLEMENTARY INFORMATION:

Introduction

The changes to the Pennsylvania SIP being approved today were submitted by Secretary Clifford L. Jones on May 18, 1981. A public hearing on this revision was held on March 24, 1981, and the amendments were approved by the Allegheny County Commissioners on April 30, 1981.

The North Boroughs area of Allegheny County is currently designated as a primary and secondary nonattainment area for Total Suspended Particulates under section 107 of the Clean Air Act. In nonattainment areas, the Act requires states to develop plans which demonstrate attainment of the TSP NAAQS as expeditiously as practicable, but not later than December 31, 1982.

On April 4, 1979, (44 FR 20372) EPA published a proposed rule entitled "General Preamble for Proposed Rulemaking on Approval of State Implementation Plan Revisions for Nonattainment Areas," and published the following supplements on July 2, 1979, 44 FR 38583; August 28, 1979, 44 FR 50371; September 17, 1979, 44 FR 53761; and November 23, 1979, 44 FR 67182. The general preamble supplements this proposal, by identifying the major considerations that will guide EPA's evaluation of the submittal.

This revision to the Pennsylvania SIP provides for the attainment of the TSP NAAQS in the North Boroughs area, and establishes an alternative emission reduction plan at the Shenango facility on Neville Island. The attainment demonstration for TSP in this area consisted of diffusion modeling using the EPA-approved Industrial Source Complex model for the base year 1979 and for 1982. Data from three monitors in the area was available, and additional monitors were established. The modeling showed that no exceedances of the annual standard would occur in 1982 under the alternative plan being approved today. In addition, analyses of available information showed that the primary 24-hour and secondary standards would also be met.

The alternative emission reduction plan (bubble) submitted by the Commonwealth involves the Coke and Iron Works of Shenango, Incorporated, located on Neville Island in the North Boroughs area. This bubble would allow the control of in-plant fugitive emissions

from road surfaces in lieu of controlling fugitive blast furnace cast-house emissions. This plan was developed in accordance with EPA's Bubble Policy as published in the Federal Register on December 11, 1979, 44 FR 71789, and would result in a net air quality benefit in addition to significant cost savings to Shenango, Incorporated. The emission reduction from road and parking area controls amounts to 297 tons per year while control of fugitive cast-house emissions would yield 90 tons per year according to EPA estimates. The net air quality benefit is the result of this reduction in TSP emission of 207 tons per year.

It should be noted that EPA's approval of Shenango's alternative control strategy should not be interpreted as necessarily establishing reasonably available control technology (RACT) levels of control for the sources involved. RACT determinations for these sources are not required because an approved modeling analysis demonstrates that attainment will be achieved by 1982 using the Shenango bubble.

This revision was proposed in the Federal Register on September 8, 1981 (46 FR 44786), and public comment was invited. This notice of September 8, 1981 contains a detailed description of both the attainment demonstration and the bubble. Persons wishing more information on this revision were referred to the proposed notice.

Public Comments

During the comment period, two comments were received. The following discussion indicates the nature of these comments and any EPA responses.

One commenter supported the SIP revision and cited information in support of it.

The Allegheny County Bureau of Air Pollution Control (BAPC) submitted comments clarifying two statements in the proposed notice. It was stated that section 902 of the County regulations replaced sections 401 and 402, dealing with visible emissions and particulate mass emissions for the Shenango facility. However, section 902 replaces only section 401. The particulate mass emission limits in section 402 are still applicable. The proposed notice also stated that monitoring requirements of the bubble may be reduced by the BAPC after January 1, 1983 depending on improvements in air quality. Although air quality improvement may be a factor in the Director's decision, that is not the only factor to be considered. EPA agrees with the comments raised by the County on these two issues.

EPA Action

The attainment demonstration for the North Boroughs area of Allegheny County, and the alternative emission reduction plan for the Shenango, Inc. Coke and Iron Works in this area, are being approved and become effective on January 28, 1982.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

Pursuant to the Provisions of 5 U.S.C. section 605(b) I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(42 U.S.C. (§§ 7401–7642))

Dated: December 21, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart NN—Pennsylvania

1. In § 52.2020, paragraph (c)(42) is added as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(42) A document entitled "Attainment Demonstration for Total Suspended Particulate in Nonattainment Area #3, Based Upon Alternate Emission Reduction Plan for Shenango, Inc." in Allegheny County, including the new section 902 of Article XX, submitted by the Commonwealth of Pennsylvania on May 18, 1981.

[FR Doc. 81-37084 Filed 12-28-81; 8:45 am]
BILLING CODE 6560-38-M

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40 CFR Part 52

[A-4-FRL 1981-3]

Approval and Promulgation of Implementation Plans; South Carolina and Florida: Removal of Conditions on Part D Approvals

Correction

In FR Doc. 81-35940, published at page 61268, on Wednesday, December 16, 1981, on page 61269, in the second column, in the "*Actions:*" paragraph, in the last line "not" should be corrected to read "now".

BILLING CODE 1505-01-M

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40 CFR Part 62

[Docket No. AH201MD; A-3-FRL-2001-7]

Maryland Plan for Controlling Sulfuric Acid Mist

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves Maryland's plan for controlling sulfuric acid mist emissions from existing sulfuric acid production facilities. Maryland's plan was submitted pursuant to the requirements of Section 111(d) of the Clean Air Act. This action will be effective on March 1, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

DATES: This action is effective March 1, 1982.

ADDRESSES: Written comments should be submitted to the following address:

U.S. Environmental Protection Agency Region III, Air Media & Energy Branch, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: Henry J. Sokolowski, P.E., Chief, MD-DE-DC Metro Section (3AH12).

Copies of Maryland's submittal and accompanying support documentation are available for inspection during normal business hours at the above-listed and the following locations:

Air Management Administration, State of Maryland, 201 West Preston Street, Baltimore, MD 21201, ATTN: Mr. George P. Ferreri.

Public Information Reference Unit (PIRU), EPA Library—Room 2922, U.S.

Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

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

FOR FURTHER INFORMATION CONTACT: Ms. Joanne T. McKernan, Environmental Protection Specialist (3AH12), at the EPA Region III address cited above or by telephone at 215/597–8182.

SUPPLEMENTARY INFORMATION: Section 111(d) of the Clean Air Act requires States to submit plans to control emissions of "designated pollutants" from designated facilities. EPA is responsible for designating the facilities and pollutants for which States must develop plans. The pollutants which have been designated for control under Section 111(d) are *not* those for which ambient air quality standards have been established under Section 108 of the Act (referred to as "criteria" pollutants) nor are they listed as hazardous pollutants under Section 112. Section 111(d) requires control of certain pollutants at existing sources whenever standards of performance have been established under Section 111(b) for those pollutants from new sources of the same type.

EPA's actions in determining approval, disapproval, and promulgation of State plans must be made public.

On November 3, 1978, EPA published a Final Rulemaking (43 FR 51393) establishing a new Part 62, "Approval and Promulgation of State Plans for Designated Facilities and Pollutants," to title 40 of the Code of Federal Regulations (CFR). Today's action, as well as future actions involving other "designated facilities" and other non-criteria pollutants, will be proposed for public comment under 40 CFR Part 62.

The Secretary of Health and Mental Hygiene, State of Maryland, submitted to EPA the State's plan for controlling sulfuric acid mist from existing sulfuric acid mist production facilities. Supplemental information was submitted on October 9, 1981, by the Acting Director, Maryland Air Management Administration. The plan is required by Section 111(d) of the Clean Air Act and was developed pursuant to the requirements contained in 40 CFR Part 60, Subpart B. EPA published a final guideline document entitled "Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units (EPA–450/2–77–019) in September, 1977.

Plans submitted to meet the requirements of regulations promulgated pursuant to Section 111(d) of the Clean Air Act must contain provisions to provide for control of sulfuric acid mist emissions from existing sulfuric acid plants, including: a statement and/or summary of the necessary legal authority to control sulfuric acid mist emissions; the applicable emission standard prescribing the allowable rates of emissions; a reference to the test methods and procedures to be used to determine compliance; source compliance schedules or a commitment to submit individual source compliance schedules as they are adopted; an emission inventory; and a description of the public availability of emissions data procedures to be used by the State. 40 CFR Part 60 allows EPA to approve a standard which was previously in effect if the standard was adopted after a public hearing and is as stringent as the corresponding emission guideline published under § 60.22(a).

Maryland's emission standard for controlling gases containing sulfuric acid, sulfur trioxide, or any combination (of gases) is located in the Code of Maryland Regulations (COMAR) at Section 10.18.06.05, paragraphs A through D (previously codified as .34C2 of COMAR 10.18.02 through 10.18.07). These regulations were previously approved by EPA in 40 CFR Part 52. Maryland requested that EPA consider this standard as meeting the requirements of 40 CFR Part 60, Subpart B for a plan controlling sulfuric acid mist emissions from existing sulfuric acid production units. By letter of October 9, 1981, Maryland also provided information required under §§ 60.25 and 60.26 of Chapter 40 of the Code of Federal Regulations, relating to legal authority and regulatory requirements.

EPA has evaluated Maryland's request, the procedures followed in approving Maryland's regulations, and the actual emission standard and has determined that the requirements of 40 CFR Part 60, Subpart B have been met. EPA's determination is based on the following evaluation. The State's legal authority to carry out its responsibilities under this plan was specifically identified in a letter dated October 9, 1981 from the Acting Director, Air Management Administration. The State has demonstrated that its emission standard is equivalent to, if not more stringent than, that contained in EPA's Guideline Document (EPA–450/2–77–019, September 1977) for Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units. The State standard is (not to exceed) 70 milligrams per cubic meter of sulfuric acid, sulfur trioxide, or any combination of them, reported as sulfuric acid. EPA's emission guideline is (not to exceed) 0.25 gram sulfuric acid mist per kilogram of sulfuric acid produced (0.5 lb./ton), the production being expressed as 100 percent H_2SO_4. Maryland's emission inventory consists of one source, the Olin Corporation, located in Baltimore City, Maryland. This source is meeting the emission standard prescribed in the regulation. Therefore, the requirements of § 60.24 relating to the submission of compliance schedules is met since no schedule is required. The State regulations require testing of sulfuric acid mist by using EPA Reference Method 8, which is the EPA-recommended method. This method is described in Maryland's Stack Test Methods for Stationary Sources, TM 73–116 (revised November 1980). Therefore, the requirements of Subpart C of 40 CFR Part 60 have been met. Maryland's monitoring, record-keeping, source surveillance and public inspection procedures, as contained in COMAR Section 10.18.01.04, paragraphs A, B and C of Maryland's air quality regulations (formerly codified as COMAR Section 10.18.01.06A, .06B, and 10.18.01.12) have been previously approved as a part of Maryland's implementation plan contained in Part 52 of the Code of Federal Regulations and are found to be satisfactory to meet the requirements contained in Part 60, Subpart B.

In summary, EPA has determined that the plan submitted by the State of Maryland to control sulfuric acid mist from existing sulfuric acid production units meets the requirements of Section 111(d) of the Clean Air Act and the provisions of Part 60 of 40 CFR, Chapter I. Therefore, the Administrator is approving this plan as submitted.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and subsequent notices will be published before the effective date. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. This action constitutes a SIP approval under Section 111(d) of the

Clean Air Act and only approves State actions. It imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(42 U.S.C. 7411(d))

Dated: December 21, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1981.

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations is amended by adding the following sections to Subpart V:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

* * * * *

Subpart V—Maryland

* * * * *

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

Sec.
62.5101 Identification of plan.
62.5102–62.5109 [Reserved]

* * * * *

Authority: Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7413 and 7601).

Subpart V—Maryland

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

§ 62.5101 Identification of plan.

(a) Title of plan: "Control of Sulfuric Acid Mist From Existing Sulfuric Acid Production Units."

(b) The plan was officially submitted by the Secretary of Health and Mental Hygiene, State of Maryland on August 30, 1978.

(c) Identification of sources: The plan includes the following sulfuric acid plants:

Olin Corporation, Baltimore City, Maryland.

§§ 62.5102–62.5109 [Reserved]

[FR Doc. 81-37102 Filed 12-28-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 62

[A-4-FRL-2005-1]

North Carolina: Fluoride Emissions From Existing Primary Aluminum Plants; Sulfuric Acid Mist From Existing Sulfuric Acid Plants, Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA announces its approval of North Carolina's plan for controlling fluoride emissions from existing primary aluminum plants. The plan was submitted on April 16, 1981, to comply with the requirements of Section 111(d) of the Clean Air Act and EPA's implementing regulations and guidelines; supplemental information was submitted on August 24, 1981. This notice also corrects errors in EPA's approval on August 14, 1981 (46 FR 41055), of North Carolina's plan to control sulfuric acid mist emissions from existing sulfuric acid plants. These actions will be effective March 1, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

DATE: These actions are effective March 1, 1982.

ADDRESSES: Copies of the materials submitted by North Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460
Library, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365
Library, Office of the Federal Register, 1100 L St., NW., Room 8401, Washington, D.C. 20005
Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the Region IV Air Programs Branch at 404/881-3043 (FTS 257-3043).

SUPPLEMENTARY INFORMATION: Following notice and public hearing in conformity with 40 CFR 60.23, the North Carolina Environmental Management Commission adopted regulation 2D.0529, Fluoride Emissions from Primary Aluminum Reduction Plants, and submitted it to EPA on April 16, 1981, to comply with the requirements of Section 111(d) of the Clean Air Act and EPA's implementing regulations and guidelines. On August 24, 1981, the State submitted additional information needed to complete its 111(d) plan for this category of existing facilities.

EPA has evaluated the North Carolina plan by comparing it with the requirements for State plans for designated facilities, as set forth in Subpart B of 40 CFR Part 60, Adoption and Submittal of State Plans for Designated Facilities, and with the EPA guideline document, Primary Aluminum: Control of Fluoride Emissions from Existing Primary Aluminum Plants (EPA-450/2-78-049b).

The provisions of regulation 2D.0529 apply to all primary aluminum plants which are not subject to EPA's Standards of Performance for New Stationary Sources. In effect, this means the two potlines of prebake cells at the Badin facility of the Aluminum Corporation of America. Under the regulation, fluoride emissions must be captured at an efficiency of 95 percent, and 99 percent of the captured emissions must be removed before discharge of the exhaust gas to the atmosphere. The regulation also specifies operating and maintenance procedures which must be observed. The facility is currently achieving the prescribed level of control, according to information submitted to the State. In order to receive a PSD (prevention of significant deterioration) permit needed to construct a third potline, however, the company has agreed to upgrade the hooding of the two existing potlines to achieve a capture efficiency of at least 96.5 percent. The new potline cannot begin operation until the upgraded controls on the existing lines are operational. When this capture efficiency is achieved, fluoride emissions from the existing lines will be 2.5 pounds per ton of aluminum produced, according to the company.

Action. EPA approves the North Carolina plan for controlling primary aluminum fluorides from existing sources. This action is taken without prior proposal since the plan is noncontroversial and no comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be

published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

A letter from the State dated August 27, 1981, pointed out several errors in a notice of final rulemaking published on August 14, 1981 (46 FR 41055) to approve the North Carolina plan for controlling emissions of sulfuric acid mist from existing sulfuric acid plants: only the plants of Texasgulf, Inc. (formerly Texas Gulf Sulfur Company) are large enough to be subject to the requirement for continuous emission monitoring; also, all acid plants in the State are sulfur-burning. The identification of the plan in Subpart II of this part is corrected below.

Under Section 307(b)(1) of the Clean Air Act, judicial review of EPA's approval of this plan is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on or before March 1, 1982. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the present rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements. In addition, it applies to a single facility.

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it imposes no new burden on sources.

Note.—Incorporation by reference of State plans for designated facilities and pollutants was approved by the Director of the Federal Register on July 1, 1981.

(Sec. 111(d) of the Clean Air Act (42 U.S.C. 7411(d))

Dated: December 21, 1981.

Anne M. Gorsuch,

Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart II—North Carolina

1. Section 62.8350 is amended to read as follows:

Sulfuric Acid Mist From Existing Sulfuric Acid Plants

§ 62.8350 Identification of plan.

(a) Untitled.

(b) The plan was officially submitted on October 27, 1978, and November 14, 1979.

(c) The plan includes the following sulfuric acid plants:

(1) Sulfur-burning plants operated by Texasgulf, Inc. in Beaufort County, Swift Agricultural Chemical Corporation in Brunswick County, USS Agri-Chemicals in Brunswick County, Wright Chemical Corporation in Columbus County, and Northeast Chemical Company in New Hanover County.

(2) There are no oleum plants.

(3) There are no bound sulfur feedstock plants.

2. A new § 62.8360 is added as follows:

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.8360 Identification of plan.

(a) Untitled.

(b) The plan was officially submitted on April 16, 1981; supplemental information was submitted on August 24, 1981.

(c) The plan applies to two potlines of prebake cells at the Badin (Stanly County) facility of the Aluminum Corporation of America.

[FR Doc. 81-37101 Filed 12-28-81; 8:45 am]

BILLING CODE 6560-38-M

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41 CFR Part 15-3

[AAA-FRL-2015-5]

Profit or Fee Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising its procurement regulation for establishing the profit or fee portion of prenegotiation objectives in acquisitions requiring cost analysis. The revision eliminates procedures for imposing administrative ceilings on profits or fees and establishes the method for treating facilities capital cost of money (imputed cost) when computing profit or fee objectives. The basis for this revision is Federal Procurement Regulation (FPR) Temporary Regulation 61 which, among other things, prescribes uniform policies for determining Government profit or fee prenegotiation objectives. The intended effect of the revision is to bring EPA's profit and fee policies in compliance with FPR Temporary Regulation 61.

EFFECTIVE DATE: Effective December 29, 1981.

FOR FURTHER INFORMATION CONTACT: Pamela John, Procurement and Contracts Management Division (PM-214), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202/755-0900).

SUPPLEMENTARY INFORMATION: (a) FPR Temporary Regulation 61 directs agencies not to establish administrative ceilings on profits or fees. This rule deletes material which implies that administrative ceilings on profits or fees may be established at certain organizational levels within EPA.

(b) FPR Temporary Regulation 61 also prescribes a facilities capital cost of money cost principle and requires agencies to ensure that contractors are not compensated for facilities capital cost of money both as a direct or indirect cost and in profit or fee. FPR Temporary Regulation 61 requires that profit or fee prenegotiation objectives be reduced by means of offsets when facilities capital cost of money is allowed. Specifically, the reductions are to be accomplished by using a dollar-for-dollar offset in the Government's prenegotiation profit or fee objective or by incorporating a common offset factor under an agency's structured approach for determining profit or fee.

(c) Prior to FPR Temporary Regulation 61, EPA did not recognize facilities capital cost of money as an allowable cost. Since all agencies are now required to recognize this cost, it is necessary for EPA to revise its regulation on profit or fee guidelines to provide for reductions in the profit or fee prenegotiation objective when facilities capital cost of money is allowed. This rule requires that the reduction be accomplished by using a dollar-for-dollar offset in the Government's prenegotiation profit or fee objective.

(d) The Agency has not invited public comments on this rule as it deletes material in conflict with FPR Temporary Regulation 61 and specifies which of the methods prescribed by FPR Temporary Regulation 61 is to be used to ensure that contractors are not compensated for facilities capital cost of money both as a direct or indirect cost and in profit or fee.

(Sec. 205(c), 63 Stat. 309; 40 U.S.C. 486(c))

PART 15–3—PROCUREMENT BY NEGOTIATIONS

For the reasons set out in the preamble, 41 CFR 15–3.808–50 is amended by revising paragraphs a(3), b(2), and b(3) to read as follows:

§ 15–3.808–50 Profit or fee guidelines.

(a) * * *

(3) *Limitations.* In the event that any of the methods used would result in establishing a fee objective in violation of limitations established by statute (see FPR 1–3.405–5(c)(2)), the maximum fee objective shall be the percentage allowed pursuant to such limitations. No administrative ceilings on profits or fees shall be established.

(b) * * *

(2) The contracting officer shall first measure the "Contractor's Input to Total Performance" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost recognized by the contracting officer. Such costs are multiplied by the specific percentages to arrive at specific dollar profits. The amount calculated for facilities capital cost of money shall not be included as part of the cost base for the computation of profit or fee. A complete discussion of how facilities capital cost of money is determined and how it is applied and administered is set forth in FPR Temporary Regulation 61.

(3) After computing a total dollar profit for the Contractor's Input to Total Performance, the contracting officer shall calculate the specific profit dollars assigned for cost risk and performance. This is accomplished by multiplying the total Government cost objective, exclusive of any facilities capital cost of money, by the specific weight assigned to cost risk and performance. The contracting officer shall then determine the profit or fee objective by adding the total profit dollars for the Contractor's Input to Total Performance to the specific dollar profits assigned to cost risk and performance. The profit or fee objective shall then be reduced by an amount equal to the amount of facilities capital cost of money allowed. EPA Form 1900–2 shall be used to facilitate the calculation of this profit or fee objective.

* * * * *

Dated: November 20, 1981.

John P. Horton,

Assistant Administrator for Administration.

[FR Doc. 81–37099 Filed 12–28–81; 8:45 am]

BILLING CODE 6560–39–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80–755; RM–3626]

Radio Broadcast Services; TV Broadcast Stations in Sacramento, California; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 29 in lieu of UHF television Channel 15 at Sacramento, California, in response to a petition from Shamrock Broadcasting, Co., Inc.

DATE: Effective February 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Roger D. Holberg, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Report and Order

(Proceeding Terminated)

Adopted: December 11, 1981.

Released: December 17, 1981.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Sacramento, California), BC Docket No. 80–755, RM–3626.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 45 FR 84834, published December 23, 1980, proposing the assignment of UHF television Channel 29 to Sacramento, California, and the deletion of UHF television Channel 15 from Sacramento. Comments were filed by Shamrock Broadcasting Company, Inc. ("Shamrock"), the Association of Maximum Service Telecasters, Inc. ("MST"), Northern California Broadcasting ("NCB"), and Koplar Communications of California, Inc. ("Koplar").[1] Reply comments were filed by Shamrock and Koplar. In addition, Shamrock filed a response pertaining to arguments raised by Koplar for the first time in its reply comments.

The Comments

2. In its Petition for Rule Making, Shamrock had proposed that UHF television Channel 15, currently assigned to Sacramento but unavailable for new station applications,[2] would be replaced with Channel 29, which could be allocated to Sacramento in full compliance with all mileage separation requirements and without adversely affecting existing assignments or authorizations. In its comments Shamrock states that if Channel 29 is assigned, it will apply for a construction permit and, if granted, it will construct a facility in accordance with the application.

3. In a jointly filed comment, NCB and Koplar object to the assignment of Channel 29 to Sacramento. NCB (and later Koplar) operates a television station on Channel 31 in Sacramento. In their comment they contend that second adjacent UHF channels have never been assigned to the same community. A station on Channel 29, they argue, will have to have its transmitter placed some twenty miles from the Channel 31 transmitter to avoid intermodulation taboos. This, they contend, will result in the Channel 29 antenna having to be placed away from the location of all other Sacramento television station antennas. In order to avoid shortspacing to the Channel 31 transmitter by the required 20 miles, and at the same time to place a city grade signal over all of Sacramento, a Channel 29 transmitter would have to be placed in Sacramento itself, or to the north, east or west of the city. They assert that if the transmitter is placed in Sacamento, it will not afford the coverage to other communities in the "Sacramento-Stockton-Modesto market" that other Sacramento stations are able to provide. This would, they continue, cause difficulty in reception of Channel 29 in those other communities and would make the Channel 29 facility a marginal one. Furthermore, the assignment would block Channel 31's ability to relocate its transmitter in the future because of the need to maintain a twenty mile separation from the Channel 29 transmitter. To avoid these asserted difficulties it is proposed that the Commission assign Channel 61 or Channel 68 to Sacramento. Both channels, it is argued, could be assigned consistent with all separation

[1] NCB was the licensee of television Station KMUV–TV (now KRBK–TV), Channel 31, in Sacramento. During the pendency of this proceeding, it assigned its license to Koplar. The comments filed by NCB were joined in by Koplar.

[2] In 1970, the Commission permitted shared use of UHF television Channels 14 through 20 by land mobile radio services (Docket No. 18261). Specific channels were designated for land mobile use in 10 (later expanded to 13) major urban areas. While none of these channels were in Sacramento, Channel 15 is unavailable because adjacent channels within 140 miles of a channel designated for land mobile use were considered unavailable and Channels 16 and 17 in San Francisco were designated for land mobile use. Because Sacramento is less than 140 miles from San Francisco, Channel 15 in Sacramento was rendered unavailable for a new television station.

requirements, would enable an operator on the channel to locate its antenna at Walnut Grove with the other Sacramento stations, and would provide coverage that would be competitive with other stations. Moreover, unlike Channel 29, the assignment of Channel 61 or 68 would not inhibit the future relocation of Channel 31's transmitter. NCB/Koplar argue that changes to its station's facilities, including a move to a taller tower, are necessary for the station to remain viable in view of the station's prior, unsuccessful, history. Koplar says it is actively considering alternate transmitter sites in conjunction with plans to upgrade the station's facilities and, accordingly, asks that if the Commission does assign Channel 29 to Sacramento, that it also restrict the transmitter location to exclude not only sites within 20 miles of Channel 31's existing site but, additionally, within 20 miles of three other transmitter sites under consideration for Channel 31.[3]

4. In its reply comments [4] Shamrock contends that the objections of NCB/Koplar are without merit and are either factually erroneous or based upon speculation. Shamrock points out that, contrary to NCB/Koplar's allegation, in several other markets UHF channels have been assigned that are within two channels of each other (*e.g.*, Channels 36 and 38 in San Francisco, Channels 50 and 52 in Los Angeles, *etc.*). Moreover, Shamrock asserts that Channel 29 can be assigned to Sacramento in compliance with all existing Commission rules and that if NCB and Koplar object to those rules, they should challenge the rules themselves. Shamrock similarly rejects the characterization of a Channel 29 station as being a "substandard" station. It points out that a Channel 29 station would not be short-spaced to any other television station, would not have to provide "equivalent protection" and could operate at maximum antenna height and power. It argues that at heart NCB/Koplar's assertion is that Channel 29 would not be able to adequately serve communities other than that to which it would be assigned. Shamrock asserts that there is no requirement that Channel 29 in Sacramento be able to serve Stockton and notes that Stockton has three channels assigned to it. Nor does Shamrock believe that the inhibitions on its ability to locate its transmitter will cause it any competitive difficulty. It bases its predictions of the economic viability of a Channel 29 station on its extensive broadcast experience. Shamrock argues too that relocation of the Channel 31 transmitter is purely speculative, is unnecessary to that station's viability, and should not be considered by the Commission as a basis for rejecting the assignment of Channel 29 to Sacramento or limiting the placement of the Channel 29 transmitter more than it is limited by existing regulations and assignments. Shamrock disputes the NCB/Koplar contention that television receivers with automatic frequency control might tend to "pull away" from Channel 31 if the Channel 29 signal is particularly strong. It asserts that in other markets where two UHF stations operate on channels only two numbers apart (San Francisco-San Jose) no such difficulty was discovered by Shamrock's consulting engineer who studied the market with regard to this phenomenon. Finally Shamrock argues that the allocation of either Channel 61 or 68 would have preclusive effects over twice the geographical area of a Channel 29 assignment (making the assignment of Channel 29 more efficient) and argues that both Channel 61 and Channel 68 may not be sited at a transmitter site in the Walnut Grove area given a pending application for a station on Channel 64 in Stockton.

5. In reply comments, Koplar reasserts that the assignment would have adverse consequences upon Channel 31 and asserts that Channel 29 would create "undesirable intermodulation products * * * between the Channel 29 aural and visual carriers," as distinguished from intermodulation between Channels 29 and 31. Koplar fears that this intermodulation could impair its station's visual quality in areas where Channel 29's signal is particularly strong. Indeed, it believes that its ability to provide an "acceptable level of technical service to viewers," in Sacramento itself could be prejudiced. The interference that a station on Channel 29 would allegedly cause, together with restrictions that the placement of Channel 29's transmitter would place on possible future movement of Channel 31's transmitter are claimed to have the effect of undermining the viability of Channel 31. Accordingly, Koplar again asks that the Commission consider the assignment of either Channel 61 or 68 to Sacramento in lieu of Channel 29.

6. Because Koplar presented an engineering theory for the first time in its reply comment, Shamrock filed a response to that reply comment.[5] Shamrock asserts that the intermodulation product that Koplar argued would be created between the aural and visual carriers of a station on Channel 29 does not exist in the real world. Such intermodulation products are described as being "extremely weak" and diminished by the substantial difference in signal strength between the Channel 29 aural and visual carriers. Indeed, when Shamrock's consulting engineer studied what Shamrock believes to be a comparable situation (in the San Francisco-San Jose market), no such intermodulation could be detected. Shamrock concludes that Channel 29 can be assigned to Sacramento consistent with all Commission allocations criteria and asks that we amend the Table of Assignments accordingly.

Discussion

7. We believe that the public interest would be served by the assignment of Channel 29 to Sacramento together with the deletion of Channel 15 from that community. The arguments raised in opposition to this assignment simply are not persuasive. When broken down into their simplest form these arguments are: (a) That the Commission does not assign UHF channels less than six channels apart to the same community; (b) that a Channel 29 licensee would not adequately serve the same market as is served by other Sacramento stations; (c) the relocation of Channel 31's transmitter would be unduly restricted; and (d) that Station KRBK–TV (Channel 31) would receive one or more types of intermodulation products from a Channel 29 station and could otherwise have its signal interfered with. We will discuss these arguments *seriatim*.

8. It is clear that the Commission has, indeed, assigned UHF channels within six channel numbers of each other to the same community. Such an assignment exists in California in, for instance, Modesto (Channels 19– and *23+). While it is true that we do not routinely make such assignments, the fact is that UHF assignments within six channels of each other in the same community are not unprecedented and our general predilection to avoid such assignments

[3] MST filed a brief comment supporting Shamrock's position on the condition that the Commission make it clear that Channel 29 must be used consistent with all mileage requirements. Absent such a commitment, it asks that the Commission assign another channel to Sacramento.

[4] Shamrock filed a Motion for Extension of Time after the deadline for reply comments and obtained the concurrence of all other participants in this proceeding. Given the agreement of all parties and it appearing that no prejudice will result to the public or the Commission, we shall consider the late filed pleading.

[5] In its reply comment Koplar stated that it would have no objection to the filing of such a pleading under the circumstances. On the basis that Shamrock should have the opportunity to comment on new matters raised by Koplar, *i.e.*, the question of intermodulation between the audio and video carriers, we will accept its response.

does not, of itself, preclude our action herein.[6]

9. Even assuming that a station operating on Channel 29 in Sacramento would have to place its antenna in a location that would hinder its ability to completely cover Stockton or Modesto, such is not a reason to reject the instant proposal. A Sacramento station clearly owes its principal obligation to its community of license. If a Sacramento station places the requisite quality signal over the entire principal community to be served [7] and otherwise serves its principal community, its inability to reach other communities is irrelevant here except with regard to its potential audience and potential for generating revenue based thereon. This, contrary to Koplar's inference, is a business judgment that should be made by an applicant to operate on Channel 29 and not by the Commission. If such an applicant believes that market forces will render a Channel 29 station a viable concern, it will apply for, construct and operate such a station. If it does not believe such a station would be viable it is hardly likely that it would even file the application. And even if its belief that such a station would be viable turns out to be erroneous, it, not the public, would suffer the unfortunate consequences of business failure. Any licensee on Channel 29 will be expected to operate consistent with all Commission regulations and, accordingly, we do not consider Koplar's suggestion that such a station would provide less than full service to be credible. So too, the argument concerning the inhibitory effects of a Channel 29 assignment on Channel 31's ability to relocate its transmitter in the future is unpersuasive. When taken to its logical conclusion such an argument would prevent the Commission from taking almost any assignment action as an existing licensee could always argue that to take the action would inhibit its ability to alter its facilities in some fashion at some time in the future. We must deal with the facts before us. In this case those facts are that Channel 31's transmitter is at Walnut Grove, no change in its location has been applied for, and a full-service television station could operate in Sacramento on Channel 29 without violating any Commission separation requirement.

10. Finally, there is the issue of interference to the existing Channel 31 station. In various filings, Koplar has contended that it would receive one or more types of interference to its signal from a station on Channel 29. Shamrock, of course, disputes this. But this argument between the parties ignores a crucial point. That point is that no station is completely protected from all interference to its signal. To minimize objectionable interference the Commission has adopted certain regulations pertaining to power limitations, antenna heights and placements, and channel assignments. If a proposal is in compliance with all such strictures, the fact that an existing television station might receive some interference under some conditions is not a reason to reject the proposal. Accordingly, even if a Channel 29 station might, under some conditions, cause some slight interference to Channel 31 (and there is considerable dispute in the record over whether it would cause any) so long as the Channel 29 station complied with all Commission regulations there would be no basis to uphold a complaint from the Channel 31 station. In this situation it would be receiving what it was entitled to in terms of protection—no more and no less. Against this is the clear benefit to the public resulting from an additional television service in Sacramento.

11. That having been said we also must say that Koplar's predictions of intermodulation interference are, in our view, unwarranted and unrealistic. As noted above, UHF television channel assignments in a community are generally spaced six channels apart. Channel spacings of fewer channels are generally avoided because of the possibility of intermodulation interference. However, this type of interference only occurs where two very strong signals are present at a receiver, which is precisely why the Commission established a twenty-mile distance separation requirement for stations separated by 2, 3, 4, or 5 channels. Therefore, in instances where transmitter sites close to the city of license are used, channel assignments typically are 6 or more channels apart. However, in this instance, where Channel 31's transmitter is located at Walnut Grove which is some distance south of Sacramento, it is clear that any eventual licensee on Channel 29 will easily be able to provide adequate coverage to Sacramento from a transmitter located at least twenty miles distant from Channel 31's; therefore the intermodulation product should not exist. This appears to coincide with the experiences of Shamrock's consulting engineer who conducted studies in markets with two UHF channels spaced less than six channels apart and found no perceptible intermodulation interference.

12. The assignment of Channel 29 to Sacramento makes eminent sense and is in the public interest. Rather than maintaining Channel 15 in Sacramento, where it cannot currently be utilized, deleting that assignment, and substituting in its place Channel 29, will permit a new television service in Sacramento thereby promoting the goals of diversity, competition, and the efficient utilization of the frequency spectrum.

13. Accordingly, it is ordered, That the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended, effective February 16, 1982, as follows for the community listed:

City	Channel No.
Sacramento, California	3, *6, 10, 29–, 31–, 40–

14. Authority for the action taken herein is found in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

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

16. For further information concerning this proceeding contact Roger D. Holberg, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-36938 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-515; RM-3850]

FM Broadcast Station in Hilo, Hawaii; Changes Made in Table of assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Class C Channel 234 to Hilo, Hawaii, in response to a petition filed by Hawaii Broadcasting Company, Inc. The assigned channel could provide a third FM service to Hilo.

DATE: Effective February 16, 1982.

[6] See paragraph 11, *infra.*

[7] See § 73.685(a) of the Commission's Rules.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Report and Order—Proceeding Terminated

Adopted: December 16, 1981.

Released: December 22, 1981.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Hilo, Hawaii), BC Docket No. 81-515, RM-3850.

1. The Commission has under consideration a Notice of Proposed Rule making, 46 FR 42474, published August 21, 1981, proposing the assignment of Class C Channel 234 to Hilo, Hawaii, as its third FM assignment. The Notice was issued in response to a petition filed by Hawaii Broadcasting Company, Inc. ("petitioner"), licensee of AM Station KPUA, Hilo, Hawaii. Supporting comments were filed by the petitioner, restating its intent to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Hilo (population 37,017),[1] located on the island of Hawaii (population 92,053) is approximately 336 kilometers (210 miles) southeast of Honolulu, Hawaii. It is served locally by three full-time AM stations (KHLO, KIPA, KPUA), and two FM stations KFSH (Channel 246, CP), and KKBG (Channel 250).

3. The Notice requested the petitioner to furnish economic and demographic data, to demonstrate the need for an additional FM assignment at Hilo. In its comments the petitioner asserts that Hilo's population showed an estimated 33% increase from 1970 to 1980, and the growth pattern is expected to continue. According to the petitioner, the economic development at Hilo has surpassed the population growth, with tourism the primary factor of the economy. The region's business and governmental activities are centered in Hilo. The petitioner alleges that the proposed assignment would provide an additional source of information to the community while supporting its interests and needs.

4. As stated in the Notice the assignment of Channel 234 to Hilo will cause preclusion on Channels 231, 232A, 233, 234 and 235. Alternate channels are available to those communities precluded by the assignment.

5. After careful consideration of the proposal, we believe that the petitioner has provided an adequate showing for the need of an additional allocation at Hilo and that the public interest would be served by the proposed assignment. The assignment would provide a third FM assignment to this growing community. The preclusion impact is insignificant since other channels are available to the precluded areas. As indicated in the Notice, a third assignment to Hilo exceeds current population guidelines. However, where, as here, the preclusion impact is considered to be insignificant, due to the availability of channels to the precluded areas, the guidelines are applied with flexibility and assignments are made in excess of the population criteria, see Waycross, Georgia, 47 R.R. 2d 319 (1980).

6. Accordingly, pursuant to the authority contained in §§ 4(i), 5(d)(1), 303(g) and (r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, it is ordered, that effective February 16, 1982, the FM Table of Assignments, §73.202(b) of the Commission's rules, is amended with regard to the following community:

City	Channel No.
Hilo, Hawaii	234, 246, 250

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau (202) 632-7792.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 81-37032 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1980 U.S. Census.

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47 CFR Part 73

[BC Docket No. 81-436; RM-3772]

Radio Broadcast Services; FM Broadcast Station in Natchitoches, Louisiana; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 240A to Natchitoches, Louisiana, in response to a petition filed by Ben Barron. The proposed station would provide a second commercial FM service to Natchitoches.

DATE: Effective February 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Report and Order (Proceeding Terminated)

Adopted: December 14, 1981.

Released: December 16, 1981.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Natchitoches, Louisiana), BC Docket No. 81-436, RM-3772.

1. The Commission has under consideration a *Notice of Proposed Rule Making*, 46 FR 36058, published July 17, 1981, proposing the assignment of Channel 240A to Natchitoches, Louisiana, as its second commercial FM assignment. The *Notice* was issued in response to a petition filed by Ben Barron ("petitioner"). Comments were filed by the petitioner and by Natchitoches Broadcasting Company, Inc., licensee of Stations KNOC(AM) and KDBH(FM), Natchitoches, Louisiana.

2. Natchitoches (pop. 15,974),[1] seat of Natchitoches Parish (pop. 35,219) is located 352 kilometers (220 miles) northwest of New Orleans, Louisiana. It is presently served by AM Station KNOC, FM Station KDBH (Channel 249A) and noncommercial FM Station KNWD (Channel 219).

3. In comments, the petitioner stated that he would submit supplemental comments, providing the information requested in para. 5 of the Notice, to demonstrate that city grade service to Natchitoches could be provided from the proposed restricted site. Petitioner also reiterated his intent to apply for the channel, if assigned.

4. Natchitoches Broadcasting in comments, argues that Channel 240A should not have been substituted for Channel 272A, which was originally requested by the petitioner, since the proposal was made without an engineering showing for the substituted channel. Natchitoches Broadcasting states that it has no objection to the petitioner's request to file supplemental comments. It asserts it is also entitled to a fair and reasonable opportunity to review and to submit a supplemental showing and to object to any later filings of technical data in further consideration of the proposal.

[1] Population figures are taken from the 1970 U.S. Census.

5. In the *Notice* we stated that a site restriction of 12 kilometers (7.5 miles) north of the city was necessary for the proposed assignment, and we requested the petitioner to demonstrate that a city grade signal could be provided over the entire community from the restricted site. The site restriction was incorrectly stated. A Channel 240A assignment to Natchitoches requires only a 9 kilometer (5.5 miles) restriction (northeast of the city). Therefore, the information requested in para. 5 of the Notice is unecessary. For this reason, petitioner did not submit the requested data. The comments of Natchitoches Broadcasting, wherein it desired an opportunity to respond to any late filed comments from the petitioner, are therefore rendered moot.

6. The Commission believes that the petitioner has adequately demonstrated the need for an additional FM assignment to Natchitoches, and that the public interest would be served by assigning Channel 240A to that community. The transmitter site is restricted to 9 kilometers (5.5 miles) northeast of the city.

7. Accordingly, pursuant to sections 4(i), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules, it is ordered, that effective February 16, 1982, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Natchitoches, Louisiana	240A, 249A

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

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 623-7792.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Divison Broadcast Bureau.

[FR Doc. 81-36937 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-155; RM-3660, RM-3708, RM-3858]

FM Broadcast Stations, Bend and Coos Bay, Oregon; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C FM Channels 248 and 289 to Bend, Oregon, in response to separate petitions filed by Terry A. Cowan and KBND, Inc. The proposals could provide a third and fourth FM service to Bend.

DATE: Effective February 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

First Report and Order

Adopted: December 15, 1981.

Released: December 22, 1981.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (*Bend* and Coos Bay, Oregon [1]), BC Docket No. 81-155, RM-3660, RM-3708, RM-3858.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 46 FR 17811, published March 20, 1981, proposing the assignment of Class C Channels 248 and 289 [2] to Bend, Oregon, as that community's third and fourth FM assignments. The first proposal, filed by Terry A. Cowan ("Cowan"), requests assignment of Channel 248 (RM-3660), while the second, filed by KBND, Inc. ("KBND"), licensee of AM Station KBND in Bend, Oregon, requests assignment of Channel 289 (RM-3708) to that community. Opposing comments were filed by Sequoia Communications ("Sequoia"), licensee of KICE(FM) (Channel 264), in Bend, as well as by Capps Broadcasting Group, Inc. ("Capps"), licensee of Stations KGRL and KXIQ(FM) (Channel 231), also in Bend, and by High Lakes Broadcasting Company ("High Lakes"), licensee of Stations KRCO and KLJK(FM) (Channel 237A) in Prineville, Oregon. Both petitioners filed supporting comments reaffirming their intention to apply for the channels, if assigned. Reply comments were filed by Sequoia and Capps, to which KBND responded.

2. Bend (population 17,263), in Deschutes County (population 62,142),[3] is located approximately 197 kilometers (123 miles) southeast of Portland, Oregon. It is currently served by full-time AM Station KBND, daytime-only AM Station KGRL and by FM Stations KXIQ (Channel 231) and KICE (Channel 264).

3. As the Notice stated, Capps had argued that because Bend is already served by local and nearby stations, it cannot support two additional Class C channels. We noted therein that such economic considerations are deferred to the application stage. FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 60 S. Ct. 693 (1940); Carroll Broadcasting Co. v. FCC, 258 F. 2d 440 (D.C. Cir. 1958); Melbourne and Satellite Beach, Florida, 47 FCC 2d 717, 721 (1974). However, Capps pointed out that a similar request for a third FM assignment to Bend was rejected in 1975 [4] on the basis of our finding that its showing of increasing economic and population growth were not sufficient circumstances to warrant deviation from the population guidelines, and we noted particularly the adverse economic impact that the assignment would have had on an independent Bend FM station. Therefore, petitioners were requested to demonstrate in their comments how conditions in Bend have changed to warrant assignment of a third and fourth FM channel at the present time. Also, our Notice indicated that the Commission's strict adherence to population criteria had given way recently to an emphasis on the proposed assignment's efficiency in terms of its preclusive impact on other communities.[5] And, we stated that although a preclusion study had been submitted by KBND which would justify our proposing a third assignment, the need for, and the impact of, a fourth assignment had not been sufficiently shown. Proponents were therefore provided the opportunity to submit such a showing.

4. In the opposing comments of Sequoia, Capps and High Lakes, the prevalent theme is the threat of economic harm to their respective operations. In particular, Sequoia asserts that while it is not concerned with healthy competition since the present service in the Bend area is highly competitive, the addition of two FM stations would increase the intensity

[1] This community has been added to the caption.

[2] Subsequent to the issuance of the *Notice* herein, a *Public Notice* was given on March 27, 1981, Report No. 1277, of a rule making proposal filed by SGB Broadcasting, Inc. ("SGB"), licensee of Station KYNG-FM (Channel 288A), in Coos Bay, requesting substitution of Channel 289 for its current channel (RM-3858). Therein, we advised that such petition would be treated as a counterproposal to the Bend proceeding. However, a staff study reveals that Channels 248 and 289 are the only two available to Bend, yet several others are attainable for the Coos Bay proposal. Therefore, in order to accommodate all three proposals, the Coos Bay petition will be treated separately rather than as a counterproposal.

[3] Population figures are extracted from the 1980 U.S. Census.

[4] See, Bend, Oregon, Docket No. 20481, 35 R.R. 2d 836 (1975); *recons. den.*, 37 R.R. 2d 33 (1976).

[5] Citing Waycross, Georgia, 45 FR 25806, published April 16, 1980, 47 R.R. 2d 319 (1980).

of competition for the limited quantity of advertising to such a degree that the overall level of service would be affected. Further, it states that the area's economic difficulties have been intensified by a high unemployment rate, an erosion of its tourism, and a decline in its lumber industry.

5. Capps reiterates that there is presently an abundance of existing service in the area and that the proposed assignments would cause a severe financial strain on existing stations since they now compete in a three-county market. The added competition would result in a net loss of broadcast service, according to Capps. Despite our finding in the Notice (and see para. 3, *supra*), it cites FCC v. Sanders Bros., supra and Carroll Broadcasting Co. v. FCC, *supra* in support of its position of economic injury. It asserts that less powerful daytime and Class A FM stations would suffer to the point of extinction if these assignments are made.

6. As a final note, Capps adds that the Commission's population criteria envisioned a plan of at least 25,000 people in a community for each FM assignment. Thus, it claims that although Bend's population falls short of that mark, it is possible that the Class C stations could sustain themselves, but that there are no special circumstances here to warrant additional assignments to a well-served area which could preclude assignments to communities that may be presently unserved.

7. High Lakes asserts that the Commission erred in refusing to consolidate the proposal herein with two other petitions to assign Class C channels to two other communities in the area, Redmond and Madras.[6] It adds that the proposals herein are unrealistic in light of the close proximity of Bend to Redmond and Prineville, and states that such assignments would result in a derogation of service by existing area facilities since all area stations, it claims, rely on income from nearby communities.

8. In supporting comments, KBND supplied 1980 Census figures [7] which it states reflect that Deschutes County experienced a growth rate exceeding 104% during the past decade and more than doubled its population now in excess of 62,000. Thus, it adds, its originally anticipated growth of 85% has been substantially exceeded.

9. Further, KBND relies on the Commission's decision in El Dorado, Arkansas (BC Docket No. 78–143), Memorandum Opinion and Order adopted March 16, 1981, Mimeo. No. 08208, as controlling here. That decision followed a policy trend established several years ago in which the efficiency of a proposed assignment is given greater weight than in the past with respect to the location where demand is present. And, it stated that the Bend decision, 37 R.R. 2d 333 (1976), had effectively been discredited in view of recent policy pronouncements. In conclusion, KBND states that if the assignments are made and the stations remain viable, then the public interest would be served by the provision of additional radio service to a substantial area and population, in total harmony with the mandate of Section 307(b) of the Communications Act of 1934, as amended. To the extent that one or both should fail, it adds that the marketplace will have decided that no such need existed, but that such channels would then be available for reassignment elsewhere in the future.

10. As requested in the Notice, Cowan supplied a preclusion study which indicates that the proposed assignment of Channel 248 to Bend will cause preclusion to occur on Channels 245, 246, 247, 248, 249A and 251. The following communities containing a population in excess of 1,000 are said to lie within the precluded areas: Lakeview (population 2,705), Burns (population 3,293), John Day (population 1,566), Prineville (population 4,101), Redmond (population 3,721), and Madras (population 1,689). According to Cowan, each of the above-listed communities either presently has an FM assignment, or an alternate channel is available to it.

11. In an effort to demonstrate the continuing growth of Deschutes County, Cowan submitted population projections, as supplied by the Bonneville Power Administration of Oregon for the years 1985 (68,500 population) to 2000 (97,625 population), which indicates an anticipated growth in excess of 42% during that period.

12. In justification of a fourth assignment, Cowan cites the minimal preclusive effects the proposed assignments would have, the present and projected growth of Bend and its county, and the Commission's recent policy toward marketplace forces to establish and control the need for and implementation of additional services. In support thereof, he cites recent Commission precedent contained in Anchorage, Alaska, 48 R.R. 2d 1633 (1981), and Santa Fe, New Mexico, 48 R.R. 2d 1431 (1981), with regard to placing less emphasis on population criteria in favor of the preclusive impact and expression of interest for an assignment.

13. In its reply comments, Sequoia disputes that Waycross, Ga., 45 FR 25806, 47 R.R. 2d 319 (1980), is controlling here to justify waiver of the population criteria since it alleges that KBND has not shown the need for two additional assignments. Although it does not oppose the assignments *per se*, it urges that if a fourth channel is assigned to Bend, it should be one other than Channel 289 due to the conflicting proposal of SGB (see fn. 1, *supra*), at Coos Bay, Oregon.[8]

14. Capps replies that petitioners have not shown what impact a fourth assignment would have on Bend and that Bend's population growth should not be persuasive since it has been at a standstill for the last several years. It therefore urges the Commission to adhere to its earlier Bend ruling, *supra*.

15. In its reply, KBND disputes the contention that tourism has declined and reiterates that the area has shown a substantial economic and population growth. It asserts that the opponents herein are simply seeking economic protectionism. KBND has included a comprehensive community profile as provided by the City of Bend Planning Director, which, *inter alia*, reports favorably on the economic forecast for Bend, as well as provides a detailed analysis of its population projections.

16. As the Notice reflected, although a similar request for Bend was rejected (see para. 3, *supra*), that earlier denial is not controlling because our assignment policies have since been modified. The Commission now considers a proposed assignment's utility in terms of its preclusive impact on other communities in lieu of its earlier emphasis on

[6] Capps had requested that the petitions herein be consolidated with two other petitions to assign Class C channels to Redmond and Madras, Oregon. The Redmond proposal, filed by Oregon Broadcasting Company (BC Docket No 81–438, RM–3725), requested assignment of Channel 275, while the Madras petition, filed by Peregrine Broadcasting Co. (BC Docket No. 80–491, RM–3611), requests assignment of Channel 243. Capps argued that individual consideration may have an adverse impact on total service offered by existing area stations if most, or all, are adopted since the communities are closely related economically and geographically. In refusing this request, we stated that because the Commission does not allocate FM channels according to a state-wide or regional plan and each community's needs are typically considered separately, we were not convinced that the four proposals should be treated together as if they were in some way mutually exclusive. Further, we stated that the fact that each proposal involves wide-area coverage assignments does not, in itself, require consolidation.

[7] Population figures were contained in an excerpt from the Bend Bulletin of March 11, 1981, which reported these figures from the 1980 U.S. Census.

[8] Sequoia's interest in protecting the SGB proposal stems from the fact that the two have substantially the same ownership.

stringent population factors. See, Eldorado, Arkansas, *supra*, and Naples, Florida, BC Docket No. 80–415, 46 FR 25461, published May 7, 1981. We are also influenced by the on-going emphasis for additional FM stations in Bend despite our earlier denial to that community. Such insistence implies to us that the proponents believe that additional stations can endure despite the alleged competitive nature of the market.

17. As the parties recognize, the population criteria are flexible guidelines and not immutable standards. Petitioners have shown that Bend is expected to grow, and that as the hub of the County, it is also the regional retail sales center and the location of numerous state and Federal offices.

18. In the early 1960's the Commission reviewed the availability of channels and made channel assignments to communities with populations in excess of 25,000 people, even without stated expressions of interest. At the same time, it dealt separately with several petitions requesting assignments to specific communities of less than 25,000 people. By limiting unrequested assignments to communities with more than 25,000 people, the Commission maintained flexibility in the Table, permitting later assignments to smaller communities where interest developed. Here, interests have been expressed in two new assignments which could provide Bend with additional diverse local outlets of self-expression designed to meet its special needs, interests and issues.

19. We note that the preclusive effect of a third and fourth assignment to Bend upon the neighboring communities would be negligible since alternate channels are available for assignment to the relevant precluded communities. See Poplar Bluff, Missouri (BC Docket No. 78–188, 45 FR 21636, published April 2, 1980; and North Platte, Nebraska, (BC Docket No. 79–114), 44 FR 67666, published November 27, 1979. In any event, no interest was submitted herein for an FM channel in any of the listed precluded communities. Where an interest has been shown for an assignment, to allow the allocation to remain fallow on the chance of some / future expression of interest elsewhere would be to "artificially restrain" the provision of broadcast service to the detriment of the public interest. Therefore, we find that the population guidelines are not an obstacle to the proposed assignments.

20. The alleged economic impact these proposed assignments could have on the existing Bend stations is a matter which can best be assessed at the application stage where it would be feasible to investigate and consider the merits of various allegations, rather than in a rule making proceeding. See, Rome, New York 42 R.R. 2d 618 (1978); Healdsburg, California, 52 F.C.C. 2d 244 (1975); Beaverton, Michigan, 44 R.R. 2d 55 (1978).

21. In view of the foregoing considerations, we believe that the public interest would be served by the assignment of Channels 248 and 289 to Bend, Oregon, as that community's third and fourth FM assignments.

22. Accordingly, it is ordered, That effective February 16, 1982, § 73.202(b) of the Commission's rules, the FM Table of Assignments, is amended as follows:

City	Channel Nos.
Bend, Oregon	231, 248, *264, 289

23. Authority for the action taken herein is contained in sections 4(i), 5(d)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

24. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (42 U.S.C. 154, 303))

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81–37033 Filed 12–28–81; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Twenty-ninth Rev. S. O. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Twenty-ninth Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes various railroads to provide interim service over the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE: 12:01 a.m., December 26, 1981, and continuing in effect until 11:59 p.m., December 31, 1981, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT:

M. F. Clemens, Jr., (202) 275–7840.

SUPPLEMENTARY INFORMATION:

Decided: December 22, 1981.

Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254 (RITEA), the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for those operations.

In view of the urgent need for continued service over RI's lines pending the implementation of long-range solutions, this order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Appendix A, to the previous order, is revised by adding at Item 23, the authority for Kyle Railroad Company (Kyle) to operate between Belleville and Phillipsburg, Kansas, a distance of approximately 92.6 miles. Pursuant to this authority, Kyle will establish rates and necessary interchanges to permit the routing of traffic via the Atchison, Topeka and Santa Fe Railway (ATSF) at Courtland, Kansas. This should provide shippers at Phillipsburg with a previously unavailable routing option. At present, Burlington Northern Railroad (BN) will be responsible to switch all industries located at Phillipsburg and arrange with Kyle on a mutually agreed upon point at which interchange of eastbound traffic can occur.

Appendix B of Thirteenth Revised Service Order No. 1473 is unchanged, and becomes Appendix B of this order.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Twenty-ninth Revised Service Order No. 1473.

(a) Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI) debtor (William M. Gibbons, Trustee), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a) of this section.

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Pub. L. 96–254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations. Termination of interim operations will require at least thirty (30) days notice to the Railroad Service Board and affected shippers.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a) of this section, operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(1) In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) Application. The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) Rate applicable. Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

(l) The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) Effective date. This order shall become effective at 12:01 a.m., December 26, 1981.

(n) Expiration date. The provisions of this order shall expire at 11:59 p.m., December 31, 1981, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Pub. L. 96–254.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

Appendix A—RI Lines Authorized to be Operated by Interim Operators

1. *Louisiana and Arkansas Railway Company (LA):*

A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. *Peoria and Pekin Union Railway Company (PPU):* All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois

3. *Union Pacific Railroad Company (UP):*

A. Beatrice, Nebraska

B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska

4. *Toledo, Peoria and Western Railroad Company (TPW):*

A. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois

5. *Chicago and North Western Transportation Company (CNW):*

A. from Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri

B. from Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0)

C. from Inver Grove (milepost 344.7) to Northwood, Minnesota

D. from Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6)

E. from Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 364)

F. from Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7)

G. from Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0)

H. from Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9)

I. from Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2)

J. from Iowa Falls (milepost 97.4) to Estherville, Iowa (milepost 206.9)

K. from Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7)

L. from Palmer (milepost 454.5) to Royal, Iowa (milepost 502)

M. from Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2)

N. from Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and

to serve all industry formerly served by the RI at Cedar Rapids

O. from Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6)

P. Sibley, Iowa

Q. Worthington, Minnesota

R. Altoona to Pella, Iowa

S. Carlisle to Indianola, Iowa

T. Omaha, Nebraska (between milepost 502 to milepost 504)

U. Earlham (milepost 388.6) to Dexter, Iowa (milepost 393.5)

V. Peoria Terminal Company trackage from Iowa Junction (RI milepost 164.32/PTC milepost .91) through Hollis, Illinois to the Illinois River bridge (milepost 7.40)

6. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW):*

A. from West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland

B. Washington, Iowa

C. from Newport, to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota

D. from Davenport to Iowa City, Iowa

E. at Davenport, Iowa

7. *Davenport, Rock Island and North Western Railway Company (DRI):*

A. Moline, Illinois

B. Rock Island, Illinois, including 26th Street yard

C. from Rock Island through Milan, Illinois, to a point west of Industrial complex

D. from Rock Island, Illinois, to Davenport, Iowa, sufficent to include service to Rock Island Arsenal

8. *St. Louis Southwestern Railway Company (SSW):*

A. from Brinkley to Briark, Arkansas, and at Stuttgart, Arkansas

B. at North Topeka and Topeka, Kansas

9. *Little Rock & Western Railway Company (LRWN):* from Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2); and from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

10. *Missouri Pacific Railroad Company (MP):* from Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5); Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 142.0); Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7.

11. *Norfolk and Western Railway Company (NW):* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track, for the purpose of serving industries located adjacent to such tracks. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

12. *Southern Railway Company (SOU):*

A. At Memphis, Tennessee.

13. *Cadillac and Lake City Railroad (CLK):*

A. from Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 2.7) all in the vicinity of Denver, Colorado

B. from Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado (milepost 602.8), all in the vicinity of Colorado Springs, Colorado

C. from Limon, Colorado (milepost 532) to but not including Caruso, Kansas (milepost 429.3), with over-head rights from Caruso to Colby, Kansas, in order to effect interchange with the Union Pacific

D. Rock Island trackage rights over Union Pacific Railroad Company between Limon and Denver, Colorado.

14. *Baltimore and Ohio Railroad Company (BO):*

A. from Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles

B. from Bureau, Illinois (milepost 114.12) to Henry, Illinois (milepost 126.94) a distance of approximately 12.8 miles.

15. *Keota, Washington Transportation Company (KWTR):*

A. from Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently

B. at Vinton, Iowa (milepost 120.0 to 123.0)

C. from Vinton Junction, Iowa (milepost 23.4) to Iowa Falls, Iowa (milepost 97.4).

16. *The La Salle and Bureau County Railroad Company (LSBC):*

A. from Chicago (milepost 0.60) to Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois.

B. from Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (Subdivision 1A, milepost 14.8), at Blue Island Illinois.

C. from Gresham (subdivision 1, milepost 10.0) to South Chicago (subdivision 1B, milepost 14.5) Chicago, Illinois.

D. From Pullman Junction, Chicago, Illinois, (milepost 13.2) running southerly to the entrance of the Chicago International Port, a distance of approximately five miles, for the purpose of bridge rights only.

17. *The Atchison, Topeka and Santa Fe Railway Company (ATSF):*

A. At Alva, Oklahoma

18. *The Brandon Corporation (BRAN):*

A. from Belleville, Kansas (milepost 226.1), to Manhattan, Kansas (milepost 143.0), a distance of approximately 83 miles.

19. *Iowa Northern Railroad Company (IANR):*

A. from Cedar Rapids, Iowa (milepost 100.5), to Waterloo, Iowa (milepost 150.76).

B. from Shell Rock, Iowa (milepost 172.1), to Manly, Iowa (milepost 225.1).

C. At Vinton, Iowa, and west on the Iowa Falls Line to milepost 24.3.

20. *Iowa Railroad Company (IRRC):*

A. from Council Bluffs (milepost 490.15) to Dexter, Iowa (milepost 393.0) a distance of approximately 97.15 miles.

B. from Audubon Junction (milepost 440.7) to Audubon, Iowa (milepost 465.1) a distance of approximately 24.4 miles.

C. from Hancock, Iowa (milepost 6.4) to Oakland, Iowa (milepost 12.3) a distance of approximately 5.9 miles.

21. *Missouri-Kansas-Texas Railroad Company (MKT):*

A. from Oklahoma City, Oklahoma (milepost 496.4) to McAlester, Oklahoma (milepost 365.0), a distance of approximately 131.4 miles.

22. *Chicago Short Line Railway Company (CSL):*

A. from Pullman Junction easterly for approximately 1,000 feet to serve Clear-View Plastics, Inc., all in the vicinity of the Calumet switching district.

*23. *Kyle Railroad Company (Kyle):*

A. from Belleville (milepost 189.4) to Phillipsburg, Kansas (milepost 282.0), a distance of approximately 92.6 miles.

*Added.

[FR Doc. 81-37120 Filed 12-28-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing; Squid Allocation

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) allocates 18,668 metric tons of Loligo squid from "reserve" to the total allowable level of foreign fishing. This action is required by the formula established in the regulations implementing the fishery management plan for Atlantic squid. The allocation will encourage full utilization of the optimum yield.

EFFECTIVE DATE: December 29, 1981.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Squid Fishery (FMP), as amended, established a reserve of 19,000 metric ton (mt) of Loligo squid (45 FR 45296); regulations provided a mechanism to allocate all or part of the reserve to the total allowable level of foreign fishing (TALFF) (45 FR 68363).

The implementing regulations at 50 CFR 611.51(b) and 655.22(c) direct the Regional Director of the Northeast Region, NMFS, to allocate the reserve to TALFF if certain criteria are met. Following the procedures of § 655.22(a), the domestic catch of Loligo from April through August, 1981, of 1,794 mt has been multipled by 1.3. This quantity equals 2,332 mt. Since 2,332 mt plus 5,000

mt authorized for joint ventures is more than the initial level of the domestic harvest of 7,000 mt, the excess of 332 mt will remain in the reserve. The remainder, 18,668 mt, is allocated to TALFF.

Dated: December 18, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

50 CFR Part 611 is revised as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1821 and 1855.

2. Appendix 1 to § 611.20, entry 1–D is revised to read as follows:

§ 611.20 Total allowable level of foreign fishing.

* * * * *

APPENDIX I

Species	Species area code	OY	DAH*	DAP	JVP	DNP	Reserve	TALFF
1. Northwest Atlantic Ocean fisheries:								
* * *	*		*			*		*
D. Squid fisheries:								
Squid, long-finned	502	44,000	7,000	2,332	4,668	0	332	36,668
* * *	*		*			*		*

[FR Doc. 81-37106 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 46, No. 249
Tuesday, December 29, 1981

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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 17

Gross Margining of Omnibus Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing new rule § 1.58 which would require positions held in omnibus accounts to be margined on a gross basis. The Commission believes that such a rule is necessary to help to prevent, or at least limit, financial loss to customers, members of the marketplace and the marketplace itself which may be caused by the bankruptcy or insolvency of a futures commission merchant ("FCM") which is not a clearing member of a commodity exchange. The purpose of the proposed rule is to require the transfer of certain funds now controlled by an originating FCM to the generally better-capitalized clearing FCM, and to strengthen the financial early warning system by providing carrying FCMs with greater information about the financial condition of those FCMs for which they are carrying omnibus accounts.

DATES: Comments must be submitted on or before March 1, 1982.

ADDRESS: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Attention: Secretariat.

FOR FUTHER INFORMATION CONTACT: Daniel A. Driscoll, Deputy Director, Division of Trading and Markets, at the above address. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

During the last six months of 1980, customers sustained losses of approximately $7 million because of the bankruptcies of three FCMs. Each of those three FCMs traded solely by means of omnibus accounts. These recent, substantial customer losses were especially disturbing when compared to the relatively insignificant losses due to bankruptcy of FCMs in prior years. However, in view of the growth and volatility of the commodity markets in recent years, the amount of money put in jeopardy by the 1980 bankruptcies was not extraordinary. For instance, the average amount of segregated funds required of FCMs audited by the Commodity Exchange Authority, the Commission's predecessor agency, in 1970 was $213,000. In 1976, a year after the formation of the Commission, the average segregation required of FCMs audited by the Commission's staff had increased to $2.1million. By 1979, this figure had climbed to $4.9 million, and by 1980 it had risen to $8.7 million. Thus, the $7 million in customer losses resulting from the 1980 bankruptcies was less than the average amount of funds required to be segregated by one FCM audited by the Commission's staff in 1980. Moreover, on December 31, 1980, those non-member FCMs trading solely through omnibus accounts held, in the aggregate, more than $125 million of customer funds in segregation. The Commission views with great concern the fact that this amount of customer funds is being held by firms that, in comparison to clearing FCMs, generally have less capital and are less equipped to handle the volatility of the commodity markets, a concern which was highlighted by the three bankruptcies which occurred during the last half of 1980. The Commission notes that many FCMs which trade solely through omnibus accounts are subject to less scrutiny than other FCMs, because at the present time only the Commission monitors the financial condition of non-member FCMs.[1]

II. The Financial Monitoring System

In light of the 1980 bankruptcies, the Commission reexamined the program designed to prevent loss of customer funds resulting from financial failures of FCMs. That program is based on four elements: (1) segregation of customer funds; (2) minimum financial requirements; (3) periodic financial reports; and (4) an early warning system. The program relies heavily on voluntary compliance and voluntary notification from an FCM when the firm triggers the early warning system or is not in compliance with the Commission's financial requirements. The program also depends on timely receipt of the relevant information, but because of the volatility of the commodity markets, it may be difficult to obtain information in a timely manner. For example, although all FCMs must file a year-end financial report which is certified by an independent public accountant, the financial condition of a firm can change dramatically from week to week, let alone from year to year.

The Commission also reexamined its methods of monitoring the financial condition of FCMs. The Commission's audit staff reviews the financial statements which non-member FCMs must submit, and conducts periodic audits of such firms. Audits of firms are scheduled on a priority basis, and firms where customer funds appear to be in jeopardy are, of course, given top priority. Those situations ordinarily involve firms that are undercapitalized or undersegregated or firms that have triggered the early warning system. The second priority involves situations where the potential exists for priority one jeopardy, such as FCMs that have a history of segregation, minimum financial or recordkeeping problems, but that are currently in compliance. The third priority consists of those cases in which there is no known or suspected danger to customer funds. Examination of FCMs may also be initiated because of large commodity price fluctuations or because of information received concerning a particular FCM.

The Commission has carefully reviewed possible ways in which to improve its program for monitoring the financial condition of FCMs. The Commission has concluded that the segregation system works about as well as can be expected, although it is far from foolproof. To make it completely effective, access to customer money by the FCM would have to be totally prohibited. A third party trustee would have to accept and hold all customer funds and commingling of any kind would have to be prohibited, including

[1] The National Futures Association ("NFA"), whose registration the Commission recently approved, has an audit and financial compliance program for all FCMs and the NFA should provide additional resources devoted to auditing non-member FCMs.

the commingling of one customer's funds with those of another customer in the same account at a bank or clearing organization. Since the Commission does not believe that such an approach is possible as a practical matter, and since it would require amendments to the Commodity Exchange Act, as amended ("Act") (7 U.S.C. 1 *et seq.* (1976 & Supp. III 1979)), it does not appear that changing the segregation requirements is the answer. It has been suggested that some form of customer account protection or insurance be instituted to prevent customer losses due to the financial failure of an FCM. Although the Commission believes that an insurance program in the commodity industry could be helpful, the Commission also recognizes that insurance would not prevent customer losses but would instead provide a means to spread such losses throughout the industry.

The Commission has made certain improvements in elements of the financial monitoring program other than segregation. The Commission strengthened the minimum financial and related reporting requirements and the early warning system for all FCMs by adopting certain amendments to those rules effective December 31, 1980.[2] In addition, the Commission increased its auditing of non-member FCMs. Beginning in December, 1980, the Commission required non-member FCMs which hold customer funds to contact the Commission's audit staff every day to report their segregation calculations, and written segregation reports must be filed weekly. The audit staff also visits each non-member FCM with over $1 million in customer funds at least once a month to perform a limited scope audit. None of these procedures eliminates the potential for the loss of customer funds due to bankruptcy, but they should enhance the staff's ability to promptly detect firms experiencing financial difficulties.

The Commission believes that the proper approach for finding a solution to the problem is to compare the financial monitoring program which exchanges employ for their clearing member FCMs and the financial monitoring program which the Commission uses for non-member FCMs. There are many similarities in the two programs. The exchanges rely on a program of segregation, recordkeeping and minimum financial regulations which is the same as the Commission's. The exchanges have the same early warning system that the Commission does. The exchanges perform audits and review financial statements in the same way the Commission's staff does. The exchange members are audited once a year by an independent public accountant just as the non-members are.

The most significant difference in the respective programs is the information that the exchanges have about clearing members which the Commission does not have about omnibus accounts. Such information is primarily developed from the pay and collect information that is generated by the individual clearing organizations. This information is generated on a daily basis by the individual clearing organizations as a result of the price changes in open positions. If adverse price changes occur, the clearing member must pay the clearing house; if the price changes are advantageous, the clearing member will collect from the clearing house. This is, in effect, an early warning system that the exchanges have which the Commission does not have. Even though, in most cases, the information is generated on a net basis rather than on a gross basis, the review of pay and collect information provides a very good indication of potential problems in a firm. Such a review will show where to look for the problems, which is at those firms which are repeatedly required to pay the clearing house due to adverse market movements.

In addition to the information available to exchanges about their clearing members through the pay and collect data generated by their financial monitoring program, there is an informal information network which exists among member FCMs. There are not many things which happen at one member that are not known by at least some other members, and this information very often finds its way to the self-regulatory organizations. Conversely, the Commission staff has rarely, if ever, received information from a member FCM that a non-member FCM was having problems until the problems were so significant that the member FCM was ready to liquidate all the positions in the account.[3]

III. Gross Margining of Omnibus Accounts

To compensate for the information which is routinely obtained by the exchanges about their clearing member FCMs but which is unavailable to the Commission or any self-regulatory organization with respect to omnibus accounts, the Commission believes that a gross margining system for omnibus accounts should be instituted. Under § 17.04,[4] carrying FCMs receive information from originating FCMs regarding open positions in omnibus accounts on a gross basis and that information is in turn passed along to the Commission and the exchanges in what is essentially a clerical operation. While the Commission recognizes that such information is important for the carrying FCMs, the exchanges and the Commission, it is imperative that more and better information be provided. The need for more information became apparent when the Commission asked several clearing firms which were carrying positions for one of the FCMs that went bankrupt in 1980 whether they suspected problems with the FCM before the bankruptcy occurred. Each of those clearing firms stated that it did not suspect any problem because the FCM's account was almost always properly margined on a net basis.

If the carrying FCMs were to receive not only position information on omnibus accounts from originating FCMs on a gross basis, but, in addition, the carrying FCMs were to receive the additional margin represented by those positions, a greater impact would be achieved and potential financial problems at the originating FCM would become more apparent to the carrying FCM. If the originating FCM was unable to meet a margin call, that would be an indication that the firm was in a deteriorating financial condition.

For the reasons stated above, the Commission is proposing that the carrying FCMs margin omnibus accounts on a gross basis. Further, as discussed above, the Commission recognizes the key role of the clearing members in assuring financial integrity and correcting potential problems. The Commission believes that gross margining would strengthen the industry by moving segregated funds into clearing firms which are better capitalized and subject to greater scrutiny while at the same time not imposing any significant burden on the industry. The gross margining system would require that margin funds be

[2] 45 FR 79416 (December 1, 1980).

[3] The early warning system, as amended effective February 28, 1980, requires an FCM to notify the Commission within 24 hours whenever it determines that any position it carries for another FCM must be liquidated or transferred immediately, or that the trading of any account of such other FCM shall be traded only for purposes of liquidation, because such other FCM has failed to meet a call for margin or to make other required deposits. There is a similar requirement for a clearing organization with respect to its member FCMs. Section 1.12(f) of the Commission's regulations (17 CFR 1.12(f) (1981)).

[4] 17 CFR 17.04(1981), as amended, 46 FR 59960, 59966 (December 8, 1981).

deposited ultimately with clearing member FCMs, even if there is more than one omnibus account interposed between such a firm and the trader. Both customer and proprietary accounts would be covered by proposed rule 1.58.

In making this proposal, the Commission is aware of certain matters which would be of particular concern if such a system were adopted. For example, it has been suggested that a system of gross margining would allow carrying FCMs to steal the customers of the originating FCM. The Commission does not believe that there is any merit to such an argument. Gross margining would not necessitate fully-disclosed accounts. As the Commission stated when it adopted requirements for gross reporting of omnibus accounts, "the originating FCM is required to disclose only the open position data for the omnibus account as a whole and is not required to disclose to the carrying FCM the identity of persons trading through the account."[5] Similarly, under a gross margining system, the originating FCM is required only to deposit and maintain margin for the positions reported to the carrying FCM and is not required to disclose the identity of persons trading through the omnibus account.

The Commission also does not believe that a gross margining system would impose unreasonable recordkeeping and operating burdens on FCMs. The Commission is proposing to amend § 17.04 so that the positions required to be margined under the gross margining system would be determined in the same manner that is used in determining open positions in an omnibus account for purposes of complying with § 17.00(f) and § 1.37(b). An originating FCM is already required by § 17.04 of the Commission's regulations[6] to report to its carrying FCM the gross positions represented by each omnibus account carried in the name of the originating FCM. Carrying FCMs in turn are required to maintain a daily record of such gross positions pursuant to § 1.37(b) of the Commission's regulations.[7] Furthermore, when filing Series '01 reports with the Commission, carrying FCMs are currently required to reflect omnibus accounts on a gross basis. Consequently, it does not appear that requiring gross margining of omnibus accounts will entail significant new recordkeeping or operational burdens. The only additional recordkeeping which would be required would result from the voluntary decision of the carrying FCM. If a carrying FCM, in accordance with the provisions in paragraph (b) of proposed § 1.58, were to allow the amount of margin required for a spread or hedge position traded through an omnibus account to be the same as would be required if the position were held in an account with the carrying FCM in the name of the beneficial holder, the carrying FCM would have to obtain and retain a written representation from the originating FCM to show that the particular contracts in question were part of a spread or hedge transaction. (Spread or hedge margin requirements are generally less than those required for positions which are not part of a spread or hedge transaction.) The Commission is not specifying a mechanism by which the originating FCM must provide the necessary information to the carrying FCM so that the latter can justify assessing only a spread or hedge margin. Instead, both parties would be free to adopt the method they deem most appropriate to insure their ability to comply with their obligations under the Commission's regulations. For example, an originating FCM could attach to the report required to be submitted to the carrying FCM pursuant to § 17.04 a statement indicating which postions are part of a spread or hedge transaction. In any event, the Commission believes that a system can be designed to allow the assessment of spread or hedge margins by carrying FCMs in appropriate circumstances which does not require originating FCMs to disclose customer names or customer account numbers to carrying FCMs.

The Commission does not believe that originating FCMs would suffer financially from being required to margin omnibus account positions on a gross basis. Originating FCMs would not be precluded from depositing United States Treasury Bills or some other acceptable form of interest-bearing instrument with the carrying FCM and originating FCMs would not, therefore, have to forego the interest they are currently earning on segregated funds. Consequently, and because a gross margining system would not require originating FCMs to disclose the names of their customers to carrying FCMs, rule 1.58 would not have anti-competitive impact. *See* Section 15 of the Act (7 U.S.C. 19 (1976)).

The Commission recognizes that gross margining of omnibus accounts will not eliminate the potential for bankruptcies of FCMs, but it should promote the earlier detection of impending financial difficulties and permit protective or remedial action to be taken which will help to prevent, or at least limit, losses to customers. The Commission also recognizes that the customer protections of gross margining are dependent upon the FCM accurately reporting the positions in the omnibus account on a gross basis. If an FCM fails to do so, the firm would violate § 17.04 of the Commission's regulations. The carrying FCM must simply insure that all positions reported in accordance with that provision are properly margined, absent any circumstances which should lead the carrying FCM to undertake further investigation.[8]

IV. Amendments to Section 17.04

The Commission is also proposing to amend § 17.04 so that option positions traded through omnibus accounts would be required to be reported on a gross basis and, in addition, the Commission is proposing to clarify certain language in § 17.04 concerning futures. At the present time, § 17.04 applies only to futures positions traded through an omnibus account. The Commission intended to have option positions traded through an omnibus account reported on a gross basis, but believed that this objective could be achieved through rules promulgated by the exchanges establishing a large trader reporting system for options. The large trader reporting system for options will be administered by the exchanges, and the Commission will review the rules of the exchanges relating to large trader reporting in connection with its review of designation applications. Because the Commission proposes to include option positions within the gross margining system, however, and because proposed new rule § 1.58 would incorporate § 17.04 by reference, the Commission is also proposing to amend § 17.04 so that it would apply to options.

V. Certification Under the Regulatory Flexibility Act

The Commission does not believe that the proposed rule would have significant economic impact on small entities. As discussed above, although the proposed rule would require that more funds be

[5] 44 FR 25431, 25433 (May 1, 1979).

[6] 17 CFR 17.04(1981), as amended, 46 FR 59960, 59966 (December 8, 1981).

[7] 17 CFR 1.37(b)(1981), as amended, 46 FR 54500, 54523 (November 3, 1981).

[8] The Commission's authority to promulgate a gross margining requirement is not circumscribed by Section 5a(12) of the Act. That provision only prohibits the Commission from reviewing any rule of a contract market relating to the setting of levels of margin. A gross margining requirement will not in any way interfere with the setting of margin levels by contract markets; it will merely require that all customers' positions are margined at least at the levels set by the contract markets, and that margin funds are held in the "stronger hands" of clearing member FCMs.

transferred from originating FCMs to carrying FCMs, this would not preclude originating FCMs from depositing interest-bearing instruments with the carrying FCMs and continuing to earn interest on segregated funds. Nor should FCMs risk losing customers or suffer any significant additional operational or recordkeeping burdens.[9] Accordingly, pursuant to Section 3(a) of the Regulatory Flexibility Act, 94 Stat. 1168 (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that the rule proposed herein, if promulgated, will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comment from any firms or other persons which believe that promulgation of this rule might have a significant economic impact upon their activities.

In consideration of the foregoing and pursuant to the authority contained in Sections 4d, 4f, 4g and 8a of the Act, 7 U.S.C. 6d, 6f, 6g and 12a (1976 & Supp. III 1979), the Commission hereby proposes to amend 17 CFR Part 1 by adding a new § 1.58, and to amend 17 CFR Part 17 by revising § 17.04, to read as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.58 is proposed to be added to 17 CFR Part 1 to read as follows:

§ 1.58 Gross margining of omnibus accounts.

(a) Each futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant on an omnibus basis must collect, and each futures commission merchant for which the omnibus account is being carried must deposit, initial and maintenance margin on each position reported in accordance with § 17.04 of this chapter at a level no less than that established for customer accounts by the rules of the applicable contract market.

(b) If the futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant allows a position to be margined as a spread position or as a hedged position in accordance with the rules of the applicable contract market, the carrying futures commission merchant must obtain and retain a written representation from the futures commission merchant for which the omnibus account is being carried that each such position is entitled to be so margined.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS AND FOREIGN BROKERS

2. Section 17.04 is proposed to be revised to read as follows:

§ 17.04 Reporting Omnibus Accounts to the Carrying Futures Commission Merchant or Foreign Broker.

(a) Any futures commission merchant, clearing member or foreign broker who establishes an omnibus account with another futures commission merchant or foreign broker shall report to that futures commission merchant or foreign broker the total open long positions and the total open short positions in each future of a commodity, and, for commodity option transactions, the total open put options purchased, the total open put options granted, the total open call options purchased, and the total open call options granted for each commodity option expiration date, in such account at the close of trading each day. The information required by this section shall be reported in sufficient time to enable the futures commission merchant or foreign broker with whom the omnibus account is established to comply with Part 17 of these regulations and reporting requirements established by the contract markets.

(b) In determining open long and open short futures positions, and open purchased and open granted option positions, in an omnibus account for purposes of complying with § 17.00 (f), § 1.37(b) and § 1.58 of this chapter, a futures commission merchant, clearing member or foreign broker shall total the open long positions of all traders and the open short positions of all traders in each future of a commodity, and, for commodity option transactions, shall total the open put options purchased, the open put options granted, the open call options purchased, and the open call options granted of all traders for each commodity option expiration date. The futures commission merchant, clearing member or foreign broker shall, if both open long and short positions in the same future are carried for the same trader, compute open long or open short futures positions as instructed below.

Issued in Washington, D.C. on December 22, 1981, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-37116 Filed 12-28-81; 8:45 am]

BILLING CODE 6351-01-M

[9] Any impact of the proposed rule will fall on FCMs. The Commission has recently published its proposed determination that a registered FCM not be considered a "small entity" within the meaning of the Regulatory Flexibility Act. Pub. L. 96-354, 94 Stat. 1165, 1166 (5 U.S.C. 601(3) and (6)). 46 FR 23940, 23941 (April 29, 1981).

DEPARTMENT OF ENERGY

Bonneville Power Administration

18 CFR Ch. X

Proposed Amendments to Rules of Procedure Governing Rate Adjustments; Extension of Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Proposed Amendments to Rules of Procedure Governing Bonneville Power Administration Rate Adjustments; Notice of Extension of Opportunity for Public Review and Comment.

SUMMARY: By **Federal Register** Notice of December 9, 1981 (46 FR 60406), Bonneville Power Administration published proposed amendments to its rules of procedure governing rate adjustments, based in part on comments received in response to a **Federal Register** Notice of February 10, 1981 (46 FR 11697), "Rules of Procedure Governing Bonneville Power Administration Rate Adjustments," and BPA's experience in its 1981 Wholesale Power Rate and Transmission Hearings conducted February through May 1981. A public meeting on the proposed amendments was scheduled for, and held on, December 21, 1981, with a written comment period ending December 24, 1981. This notice extends the period that BPA will accept public comments from December 24, 1981, to January 4, 1982.

DATE: Written comments may be submitted through January 4, 1982, to the Public Involvement Coordinator.

ADDRESSES: Written comments should be sent to: Donna Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503-230-4261, or Mr. Michael C. Dotten, Attorney, General Counsel's Office, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, 503-230-4214. Toll-free numbers for Oregon callers 800-452-8429; for callers from Washington,

Idaho, Montana, Utah, Nevada, Wyoming, and California 800-547-6048.

Dated: December 22, 1981.

Earl Gjelde,

Acting Administrator.

[FR Doc. 81-37182 Filed 12-28-81; 10:36 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 105

[Docket No. 78P-0207]

Special Dietary Foods Label Statements: Misleading Statements; Reduced Calorie Labeling for Bread; Revocation of Withdrawal of Proposed Rule; Further Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Revocation of the withdrawal of a proposed rule; further extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) further extends the time for submission of comments concerning information on methods of analysis for determining the calorie content of bread. FDA is taking this action in response to a request for a further extension of the comment period.

DATE: Comments by January 22, 1982.

ADDRESS: Send comments to: Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Taylor M. Quinn, Bureau of Foods (HFF-300), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-245-1243.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 26, 1981 (46 FR 33053), FDA proposed revoking the withdrawal of the proposal to allow bread that has achieved a 25-percent reduction in calories to be labeled as "reduced calorie" bread. In addition, the agency reopened the comment period to seek comments on specific subjects, including information concerning methods of analysis for determining the calorie content of bread. The comment period ended August 25, 1981.

On August 25, 1981, the American Bakers Association (ABA) requested a 90-day extension of the comment period to permit the Approved Methods Committee of the American Association of Cereal Chemists (AACC) time to complete the project of the proper method of analysis for determining the calorie content of bread.

The agency concluded that the ABA had presented sufficient grounds to support extension of the comment period and, in the Federal Register of September 18, 1981 (46 FR 46340), extended the comment period to November 23, 1981.

On November 19, 1981, the ABA filed with FDA the AACC's findings and recommendations.

On November 23, 1981, a request was submitted for a further 60-day extension of the comment period in order to provide an opportunity for the submission of comments on the AACC's findings and recommendations.

The agency concludes that a further 60-day extension of the comment period should be granted.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403(a), 701(a), 52 Stat. 1041, 1047 as amended, 1055 (21 U.S.C. 321(n), 343(a), 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), the comment period is further extended 60 days to January 22, 1982.

Dated: December 18, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-36678 Filed 12-21-81; 11:16 am]

BILLING CODE 4160-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty: Geographical Limits on Grants for Specially Adapted Housing Benefits for Seriously Disabled Veterans

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The VA (Veterans Administration) is proposing to amend its regulations to limit grants of specially adapted housing benefits for seriously disabled veterans to properties located within the United States, its Territories or possessions. By regulation, the VA currently has limited home, mobile home, condominium and direct loans to properties located within the United States, its Territories or possessions. There is no similar restriction on the situs of property to be acquired or specially adapted with the assistance of a specially adapted housing grant. This proposed regulation, if adopted, would make the geographical limitations for specially adapted housing grants coincide with the current geographical limits for the various VA home loan programs.

DATE: Comments must be received on or before January 29, 1982. Effective date of this regulation is proposed to be the date of final approval.

ADDRESS: Send written comments to: Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. Comments will be available for inspection at the above address during normal business hours until February 8, 1982.

FOR FURTHER INFORMATION: Mr. Lyman T. Miller, Assistant Director for Construction and Valuation (262), Loan Guaranty Service, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-389-2691).

SUPPLEMENTARY INFORMATION: The VA is authorized by Chapter 21 of Title 38, United States Code, to assist certain severely disabled veterans to acquire housing adapted to their particular handicap or adapt existing housing to their handicap. Assistance is in the form of a one-time cash grant to the eligible veteran.

The VA is proposing to add § 36.4411 to Title 38, Code of Federal Regulations governing specially adapted housing benefits to limit these types of benefits to properties located in the United States, its Territories or possessions. Similar restrictions are currently in place in the home and condominium, mobile home, and direct loan regulations (§§ 36.4329, 36.4214, and 36.4523, respectively).

The absence of loan guaranty facilities makes it impractical to authorize such grants in areas outside the sovereign jurisdiction of the United States. A veteran grant-beneficiary should receive certain services and protections from the VA such as assistance in securing a loan, inspection of the site of the home, and compliance inspections by a duly authorized inspector during the construction of a new dwelling or the alteration of an existing home. In addition, the VA must affirmatively assure that the veteran has legal title to the real estate involved for the housing grant and that the housing grant or home adaptations grant is used for the authorized purpose. These administrative requirements are necessary to assure that the veteran receives the benefits he or she is entitled to and that the Government's funds are properly expended. It would be difficult, if not impossible, to comply with these requirements in a foreign country. We,

therefore, propose to add § 36.4411 to Title 38, Code of Federal Regulations to limit specially adapted housing grants to the United States, its Territories, and possessions.

The Administrator hereby certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed rule is therefore exempt from the initial and final regulatory analyses requirements of sections 603 and 604. The reason for this certification is that this rule will regulate only a small number of individual veteran recipients who are permanent residents of or currently residing in foreign countries. A recent computer survey of VA records for potentially eligible service-connected veterans residing in foreign nations showed that there are approximately 59 veterans included in the group. There is the possibility of a few additional persons being eligible for a grant whose qualifying disability rating currently does not specifically indicate eligibility for specially adapted housing benefits. We believe, therefore, that the proposed regulation, if promulgated, will have no direct impact on small entities (i.e., small businesses, small private and nonprofit organizations, and small government jurisdictions located in the United States, its Territories or possessions). There will be no compliance costs or reporting burdens on individuals or organizations.

The proposed regulation has been reviewed pursuant to Executive Order 12291, Federal Regulation, and will not impact on the public or private sectors as a major rule as defined by the Executive Order. The regulation, therefore, is found to be nonmajor. This is because the regulation should have no economic impact in the United States, whatsoever.

This amendment is proposed under authority granted the Administrator by sections 210(c), 801(a) and (b) of Title 38, United States Code.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. All written comments will be available for public inspection at the above address only between 8 am and 4:30 pm, Monday through Friday (except holidays), until February 8, 1982. Any person visiting the Veterans Administration Central Office in Washington, DC for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

(Catalog of Federal Domestic Assistance Program Number 64.106)

Approved: December 10, 1981.

Robert P. Nimmo,

Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration proposes to amend 38 CFR Part 36 as follows:

Section 36.4411 is added as follows:

§ 36.4411 Geographical limits.

Any real property purchased, constructed, altered, improved, repaired, or specially adapted, in whole or in part with the proceeds of any specially adapted housing grant, shall be situated in the United States, which, for purposes of 38 U.S.C. Chapter 21, is defined as the several States, Territories, and possessions, including the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other area over which the United States may, at some future date, acquire sovereignty.

(38 U.S.C. 210(c), 801(a) and (b))

[FR Doc. 81-37107 Filed 12-28-81; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL 1952-4]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Certification and Test Procedures; Non-Methane Hydrocarbon Standards for Mobile Sources

Correction

In FR Doc. 81-36255, appearing at page 62366 in the issue of Wednesday, December 23, 1981, the following changes should be made in the "DATES" paragraph:

1. The date for public hearings should read, "January 18, 1982."

2. The date by which comments should be received should read, "February 18, 1982."

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Gen. Docket No. 81-706]

List of the Commission's Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act During 1981-82; Order Extending Time for Filing Comments

AGENCY: Federal Communications Commission.

ACTION: Notice of rules to be reviewed; extension of time period.

SUMMARY: This action, by the General Counsel pursuant to delegated authority, grants requests by the Radio Technical Commission for Marine Services (RTCM), the Consumer Electronics Group of the Electronics Industries Association (EIA/CEG) and the American Waterways Operators, Inc. to extend the time for filing of comments in response to the Commission's Notice in Gen. Docket No. 81-706, Federal Communications Commission's List of Rules To Be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1981-82, FCC 81-487, 46 FR 56466 (Nov. 17, 1981).

DATES: The deadline for filing comments has been extended from December 17, 1981 to March 1, 1982.

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

FOR FURTHER INFORMATION CONTACT: Donald L. McClure, Office of General Counsel, (202) 254-6530.

SUPPLEMENTARY INFORMATION:

In the matter of list of the Commission's rules to be reviewed pursuant to the Regulatory Flexibility Act During 1981-82, Gen. Docket No. 81-706.

Order

Adopted: December 15, 1981.

Released: December 15, 1981.

1. The Commission has before it requests for extension of time in which to file comments to the Commission's Notice in Gen. Docket No. 81-706, Federal Communications Commission's List of Rules To Be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1981-82, FCC 81-487, 46 FR 56466 (Nov. 17, 1981). Extension requests were filed by the Radio Technical Commission for Marine Services (RTCM) on November 27, 1981, the Consumer Electronics Group of the Electronics Industries Association (EIA/CEG) on December 7, 1981, and the American Waterways Operators, Inc. on December 10, 1981. The RTCM

requested an extension of time for filing comments from December 17, 1981 to February 26, 1982; the EIA/CEG requested an extension of time to January 22, 1982 and the American Waterways Operators, Inc. requested an extension of time to March 1, 1982. The RTCM is a Federal Advisory Committee established under the Federal Advisory Committee Act, Act Oct. 6, 1976, Pub. L. 92–463, 86 Stat. 770, as amended by Act Sept. 13, 1976, Pub. L. 94–409, section 5(c), Sept. 13, 1976, 90 Stat. 1247. Additionally, the American Waterways Operators, Inc. is a member of the RTCM. The Act requires that timely notice of each meeting shall be published in the **Federal Register**. FCC Instruction 1126.1 requires twenty days minimum notice of a meeting in order to comply with the "timely notice" requirement of the Act. The RTCM asserts that additional time will be required to convene the meetings necessary to review the Notice and to comply with the "timely notice" requirement of the Act. The EIA/CEG asserts that additional time will be required to review the large number of Commission rules involved.

2. Good cause having been shown, The request for extension of time will be granted pursuant to authority delegated to the General Counsel. See 47 CFR 0.251(b) (1980).

3. Accordingly, it is hereby ordered that the Requests for Extension of Time filed by the Radio Technical Commission for Marine Services, the Consumer Electronics Group of the Electronics Industries Association and the American Waterways Operators, Inc. are hereby granted; that the time for filing comments in the above-captioned proceeding is extended to and including March 1, 1982.

Stephen A. Sharp,
General Counsel.

[FR Doc. 81-36941 Filed 12-28-81; 8:45]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-883; RM-4005]

FM Broadcast Station in Palm Desert, California; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 244A to Palm Desert, California, in response to a petition filed by John R. Banoczi. The assignment could provide Palm Desert with a second local FM station.

DATES: Comments must be filed on or before January 29, 1982, and reply comments must be filed on or before February 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Adopted: December 15, 1981.

Released: December 22, 1981.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Palm Desert, California), BC Docket No. 81–883, RM–4005.

1. A petition for rule making was filed by John R. Banoczi ("petitioner"), seeking assignment of Channel 244A to Palm Desert, California, as that community's second FM assignment. The assignment can be made with a site restriction, as noted *infra*, to conform with the minimum distance separation requirements of § 73.207 of the Commission's rules. Petitioner states that he and his associates in Pennino Music Company[1] or a corporation to be formed, will apply for the channel, if assigned.

2. Palm Desert (population 11,801),[2] in Riverside County (population 663,923), is located approximately 176 kilometers (110 miles) east of Los Angeles, California. It is served by daytime-only AM Station KGUY and proposed FM Station KCMS (Channel 276A, application pending).

3. Petitioner states that Palm Desert has numerous financial institutions, as well as a post office, Chamber of Commerce, a Federal government office, fire stations, schools, hotels and recreational facilities. Additionally, it asserts that numerous tourist-related concerns are also located in the community. Further, petitioner advises that Palm Desert's population fluctuates as the tourist season changes.

4. Petitioner's engineering study reveals that assignment of Channel 244A to Palm Desert will cause preclusion to occur only on the co-channel and adjacent Channel 245, and further notes that the communities of Indio, Coachella, Twentynine Palms and Eagle Mountain, each with a population in excess of 1,000, lie within the precluded areas. Of these, only Eagle Mountain does not have an assignment. Petitioner indicates, however, that Channels 221A, 249A, 269A, 272A, 288A and 289 are available for assignment thereto.

5. In order to accommodate this proposal, the transmitter site must be located at least 5.3 kilometers (3.3 miles) southeast of Palm Desert to avoid short-spacing to Station KCAL (Channel 244A) in Redlands, California. Additionally, concurrence in the proposal by the Mexican Government must be obtained since Palm Desert is located within 320 kilometers (199 miles) of the United States-Mexico border.

6. In light of the foregoing, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, as follows:

City	Present	Proposed
Palm Desert, California	276A	244A, 276A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

Note:—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before January 29, 1982, and reply comments on or before February 16, 1982.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

[1] Pennino Music Co., Inc. is the licensee of FM Stations KNOB, Long Beach, California, and KXTZ, Henderson, Nevada.

[2] Population figures are derived from the 1980 U.S. Census.

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 81-883 RM-4005]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filing in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§1.415 and 1.420 of the Commission's rules and regulations, inserted parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 81-37004 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-168; RM-3561, RM-3608, RM-3899]

FM Broadcast Stations, Boothbay Harbor, Ellsworth, Farmington, Lewiston, Skowhegan, and Belfast, Maine; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 238 to Lewiston, Maine, at the request of WRXV, Inc. Also proposed are channel substitutions at Ellsworth, Belfast, and Farmington, Maine. Stations WDEA-FM, Ellsworth, and WKTJ-FM, Farmington, are ordered to show cause why their licenses should not be modified to specify operation on Channels 284 and 249A, respectively. These actions would enable Lewiston to receive its third FM assignment.

DATES: Comments must be filed on or before January 29, 1982, and reply comments must be filed on or before February 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Michael A. McGregor, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Further Notice of Proposed Rule Making and Orders to Show Cause

Adopted: December 14, 1981.

Released: December 17, 1981.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Boothbay Harbor, Ellsworth, Farmington, Lewiston, Skowhegan, and Belfast,[1] Maine, BC Docket No. 81-168, RM-3561, RM-3608, RM-3899.

1. Before the Commission is a Notice of Proposed Rule Making, 46 FR 18743, published March 26, 1981, proposing three alternative assignment plans looking toward the addition of a Class B FM channel at Lewiston, Maine, and a Class A channel at Skowhegan, Maine, with related channel substitutions at Ellsworth and Farmington, Maine. In response to this Notice, a counterproposal was submitted seeking the assignment of a Class A channel to Boothbay-Boothbay Harbor, Maine. This Further Notice addresses only the Lewiston assignment and related channel substitutions at Ellsworth and Farmington, Maine. A separate First Report and Order in this docket was previously adopted which disposed of the Skowhegan and Boothbay-Boothbay Harbor proposals.

2. With respect to Lewiston, the Notice proposed the assignment of Channel 238 to Lewiston plus the substitution of Channels 233 and 296A for Channels 239 and 232A at Ellsworth, respectively. The Notice also contained an Order to Show Cause asking why the licensee of Station WDEA-FM, Ellsworth, should not be modified to specify operation on Channel 233 instead of Channel 239.[2] Comments were filed by WRXV, Inc. ("WRXV"), the proponent of the assignment of Channel 238 to Lewiston; Dudman Communications Corporation ("Dudman"), the licensee of Station WDEA-FM, Ellsworth; and Acadia Broadcasting Company, ("Acadia"), applicant for a construction permit for FM Channel 232A at Ellsworth. Reply comments were filed by WRXV and Dudman.

3. In support of the Lewiston assignment, WRXV resubmits the information contained in its petition for rule making, which, among other things, states that because Lewiston is Maine's second largest city and the center of a regional population cluster of over 90,000 persons, the city deserves a third FM assignment. WRXV avers that if it becomes the eventual permittee for Channel 238 at Lewiston, it will reimburse Dudman for any expenses incurred by WDEA-FM in changing frequencies at Ellsworth.

4. Dudman opposes the proposed assignment to Lewiston and the channel substitutions at Ellsworth and asks that its license for WDEA-FM not be

[1] This community has been added to the caption.

[2] The *Notice* also contained an Order to Show Cause asking why the license of Station WKTJ-FM, Farmington, should not be modified to specify operation on Channel 249A in lieu of its present operating frequency on Channel 257A. Originally, this Order was issued solely to facilitate a channel assignment at Skowhegan. As will be explained more fully below, the same substitution is necessary to the assignments being proposed in this Further Notice. In order to give the Farmington licensee the fullest possible opportunity to comment, we shall issue a second order to Show Cause specifying the same channel substitution.

modified to specify operation on Channel 233 as proposed in the *Notice*. Dudman acknowledges that the assignment of Channel 233 meets all the Commission's mileage separation requirements, but argues that operation on Channel 233 will result in interference with superpower Station WHOM at Mount Washington, Maine, which operates on the second adjacent Channel 235.[3] Although the proposal is not subject to predicted interference under the Commission's interference ratios and propagation curves, Dudman believes that WDEA–FM would suffer destructive interference within its 40 mile effective coverage radius for Class B FM stations. Citing Vallejo, California,[4] and Muncie, Indiana,[5] Dudman asserts that the Commission has recognized this problem in the past and has refused to require a channel substitution which would subject an existing Class B station to interference within its 60 and 48 dBu contours from a superpower station. Dudman further states that the interference which WDEA–FM will suffer is not counterbalanced by any demonstrated need for an additional FM assignment at Lewiston. Dudman points out that Lewiston is presently served by two FM stations, and, under the Commission's present population guidelines, is not entitled to a third FM assignment.[6] Dudman states that the population growth of Lewiston has been virtually nonexistent for the past forty years. Also, Dudman states that Auburn, Maine, is located directly across the Androscoggin River from Lewiston, and that taken together the two cities are served by a total of three AM and three FM stations. Dudman further notes that the assignment of Channel 238 to Lewiston would cause preclusion over all or part of 13 Maine counties. Included in this area is the community of Kennebunk, for which no other alternative FM assignment is available. In view of all these factors militating against the Lewiston assignment, plus the interference which will be caused to WDEA–FM, Dudman requests, at the very least, that the Commission delay making the assignment until Docket 80–90 is concluded.[7] Dudman states that if the proposals in Docket 80–90 are adopted, additional channels would be available for assignment to Lewiston. Although Dudman urges that its license not be modified, it states that if the Commission does go ahead with the modification, it expects to be fully reimbursed for its expenses in changing frequencies.

5. Acadia states in its comments that it does not believe the proponents of the new FM assignments have advanced public interest considerations compelling enough to justify the extensive revisions to the Table of Assignments that the plans would entail. In the event the Commission determines that the revisions are in the public interest, Acadia requests that it be reimbursed for any expenses it may incur as a result of having to amend its application at Ellsworth.

6. Regarding Dudman's complaints that the channel substitution in Ellsworth will cause harmful interference, WRXV states in reply comments that the cases cited by Dudman involved interference to an affected station's 60 dBu contour while Dudman has shown interference only within its 34 dBu contour. WRXV opines that Dudman is seeking interference protection far beyond that contemplated by Commission rule or policy. WRXV notes that Dudman's own engineering statements fail to document any interference within a 40 mile radius of WDEA–FM. Finally, WRXV objects to Dudman's suggestion that the Lewiston assignment be delayed until final resolution of Docket 80–90 because WRXV does not wish to begin the rule making process anew to seek the assignment of a different channel.

7. Dudman presents new information in its reply comments which allegedly confirms that, if Station WDEA–FM is forced to operate on Channel 233, it will experience interference within the station's protected contour. Using the method prescribed in National Bureau of Standards, Technical Note 101, Dudman has computed the WHOM F (50,10) signal at seven selected points within 35 to 45 miles of the WDEA–FM transmitter. According to Dudman's computations, at five of the seven locations, interference to WDEA–FM would be caused by the second adjacent channel operation of WHOM at Mount Washington. Accordingly, Dudman states that the holding in Vallejo, California, *supra*, is controlling and that the channel substitution at Ellsworth should therefore not be adopted.

8. Although at this time we take no position on the alleged interference problem cited by Dudman, we believe that we have found a potential resolution of this proceeding which should alleviate both Dudman's and Acadia's concerns. According to a staff study, Channel 284 can be assigned to Ellsworth as a substitute for Channel 239 if unused Channel 284 is deleted from Belfast, Maine. Channel 258 is available as a replacement at Belfast if Channel 249A is substituted for Channel 257A at Farmington. The channel substitution at Farmington has already been proposed in the original Notice, and the licensee of Station WKTJ–FM, operating on Channel 257A at Farmington, offered no objection to modification of its license to Channel 249A. If these assignments and substitutions are made, it then becomes unnecessary to delete Channel 232A from Ellsworth; thus, Acadia could proceed with its application.[8] We believe that this proposal, although it does necessitate changing frequencies for two licensed stations, removes several of the possible problems inherent in the original proposal and should therefore be submitted for public comments. Because both of these substitutions and concomitant license modifications are being proposed in an effort to add a third FM channel to Lewiston, WRXV, the proponent of the Lewiston assignment, should indicate in its further comments its willingness to reimburse the licensees of Stations WDEA–FM, Ellsworth, and WKTJ–FM, Farmington, for their expenses incurred in changing operating frequencies.

9. We also seek further comment from WRXV on one additional issue raised in the comments. According to the Commission's policies, assignments exceeding the population guidelines will generally be granted given indication of interest in the additional channel plus a showing that the assignment will have no significant preclusive effects. In this instance, the assignment of a third channel to Lewiston does exceed our population guidelines which limit cities with a population below 50,000 to two FM assignments. However, Dubman indicates that the assignment of Channel

[3] "Superpower" stations are stations whose facilities were grandfathered prior to the adoption of the Commission's present power and antenna height requirements. Station WHOM, Mount Washington, operates at 48 kW power, with an antenna height of 3760 HAAT.

[4] 40 R.R. 2d 648 (Broadcast Bureau 1977), *review denied*, 44 R.R. 2d 375 (1978).

[5] 32 F.C.C. 2d 839 (1972), *recon. denied*, 38 F.C.C. 2d 324 (1972).

[6] The Commission's FM assignment population guidelines state that communities with populations of 50,000 or less are entitled to one or two FM assignments, while communities with populations from 50,000 to 100,000 are entitled to up to four FM assignments.

[7] Among other things, the proposals in Docket 80–90 would reduce the minimum distance separation requirements for FM stations and would create two new classes of FM stations. *See*, Modification of FM Broadcast Station Rules To Increase the Availability of Commercial FM Broadcast Assignments, 78 F.C.C. 2d 1235 (1980).

[8] We further note that this proposal removes the necessity for channel substitutions at Ellsworth in RM–3838, in order to assign Channel 293 to Brewer, Maine.

238 to Lewiston would cause preclusion to Kennebunk (population 6,621),[9] a community for which no alternative assignments are available. Given the significant preclusive impact that the proposed assignment has no Kennebunk, WRXV should present further justification for the assignment, especially with regard to our population guidelines.

10. Because the communities are located within 402 kilometers (250 miles) of the U.S.-Canada border, the proposed assignments require coordination with the Canadian government.

11. Accordingly, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, as follows:

City	Channel No.	
	Present	Proposed
Belfast, Maine	284	258
Ellsworth, Maine	232A, 239	232A, 284
Farmington, Maine	257A	249A
Lewiston, Maine	230, 298	230, 238, 298

12. It is ordered, That, pursuant to Section 316(a) of the Communications Act of 1934, as amended, and with the understanding that it will receive reasonable reimbursement of expenses incurred in changing the channel on which it has a license, Station WDEA–FM, Ellsworth, Maine, shall show cause why its license should not be modified to specify operation on Channel 284 as proposed herein instead of the present Channel 239.

13. Pursuant to § 1.87 of the Commission's rules and regulations, the licensee of Station WDEA–FM, Ellsworth, Maine, may not later than January 29, 1982, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, WDEA–FM may, not later than January 29, 1982, file a written statement showing with particularity why its license should not be modified as proposed in this Order to Show Cause. In this case, the Commission may call on WDEA–FM to furnish additional information, designate the matter for hearing, or issue, without further proceeding, an Order modifying the license as provided in the Order to Show Cause. If the right to request a hearing is waived and no written statement is filed by the date referred to above, WDEA–FM will be deemed to consent to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

14. It is further ordered, That, pursuant to section 316(a) of the Communication Act of 1934, as amended, and with the understanding that it will receive reasonable reimbursement of expenses incurred in changing the channel on which it has a license, Station WKTJ–FM, Farmington, Maine, shall show cause why its license should not be modified to specify operation on Channel 249A as proposed herein instead of the present Channel 257A.

15. Pursuant to § 1.87 of the Commission's rules and regulations, the licensee of Station WKTJ–FM, Farmington, Maine, may not later than January 29, 1982, request that a hearing be held on the proposed modification. Pursuant to section 1.87(f), if the right to a hearing is waived, WKTJ–FM may, not later than January 29, 1982, file a written statement showing with particularity why its license should not be modified as proposed in this Order to Show Cause. In this case, the Commission may call on WKTJ–FM to furnish additional information, designate the matter for hearing, or issue, without further proceeding, an Order modifying the license as provided in the Order to Show Cause. If the right to request a hearing is waived and no written statement is filed by the date referred to above, WKTJ–FM will be deemed to consent to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

16. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

17. Interested parties may file comments on or before January 29, 1982, and reply comments on or before February 16, 1982.

18. It is further ordered, that the Secretary of the Commission shall send a copy of this order by certified mail, return receipt requested, to Dudman Communications Corporation, 68 State Street, Ellsworth, Maine 04605, one of the parties to whom this Order to Show Cause is directed.

19. It is further ordered, that the Secretary of the Commission shall send a copy of this order by certified mail, return receipt requested, to Franklin Broadcasting Corporation, Voter Hill Road, Farmington, Maine 04938, one of the parties to whom this Order to Show Cause is directed.

20. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Section 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

21. For further information concerning this proceeding, contact Michael A. McGregor, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or Court review, all *ex parte* contacts are prohibited in Commmission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division Broadcast Bureau.

Appendix

[BC Docket No. 81–168 RM–3561, RM–3608, RM–3899]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

[9] Population figures are taken from the 1980 U.S. Census.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 81-36936 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-882; RM-4004]

FM Broadcast Stations in Artesia, Mississippi; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign Channel 261A to Artesia, Mississippi, in response to a petition filed by Colom and Associates. The assignment could provide Artesia with a first local FM service.

DATES: Comments must be filed on or before January 29, 1982, and reply comments must be filed on or before February 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: December 15, 1981.

Released: December 22, 1981.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Artesia, Mississippi), BC Docket No. 81-882, RM-4004.

1. The Commission herein considers a petition for rule making filed by Colom and Associates ("petitioner"), which seeks to assign FM Channel 261A to Artesia, Mississippi, as that community's first FM assignment. The assignment can be made consistent with the minimum distance separation requirements of § 73.207 of the Commission's rules. Petitioner states that it, or a newly formed corporation, will apply for the channel, if assigned as proposed.

2. Artesia (population 526),[1] in Lowndes County (population 57,304), is located approximately 32 kilometers (20 miles) west of Columbia, Mississippi. It presently has no local aural service.

3. Petitioner states that Artesia functions under a code charter with an aldermanic form of government, and that it operates its own water, sewer and gas systems. According to petitioner, the community also has a library, schools, churches, local transportation facilities, and a local newspaper, published tri-monthly, to serve its residents. It adds that the population of Artesia, of which minorities comprise 60%, has shown a steady increase during the past decade, and that it expects this growth trend will continue in the future.

4. Petitioner states that it is a minority-owned and operated partnership, and that it seeks to primarily serve the needs and interests of the Black community in Artesia. It urges that such an assignment would be in accord with the Commission's two-fold policy to effectuate greater diversity and minority ownership of broadcast facilities.

5. Petitioner refers to an engineering statement which, it asserts, indicates that the proposed assignment of Channel 261A to Artesia, Mississippi, would create no unacceptable preclusion to adjacent areas. However, we need not consider the preclusive impact with respect to a request for a first Class A channel allocation. See Policy Statement To Govern Requests for Additional Assignments, 8 F.C.C. 2d 79 (1967).

6. In view of the above, and in order to give further consideration to the request, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, as follows:

City	Channel No.	
	Present	Proposed
Artesia, Mississippi		261A.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before January 29, 1982, and reply comments on or before February 16, 1982.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. *See*, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

[1] Population figures herein are extracted from the 1980 U.S. Census.

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 81-882 RM-4004]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 81-37035 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-881; RM-3435]

FM Broadcast Station in Washington, North Carolina; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of a second FM channel to Washington, North Carolina. Petitioner, Pamlico Broadcasting Company, is willing to operate a Class A channel in competition with the already present Class C FM station in the community.

DATES: Comments must be filed on or before January 29, 1982, and reply comments on or before February 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Washington, North Carolina), BC Docket No. 81-881, RM-3435.

Adopted: December 15, 1981.

Released: December 22, 1981.

1. A petition for rule making [1] was filed by Pamlico Broadcasting Company ("petitioner"), proposing the assignment of Channel 252A to Washington, North Carolina, as that community's second FM assignment. The channel can now be assigned to Washington in conformity with the minimum distance separation provided the transmitter site is located approximately 8 kilometers (4.8 miles) southwest of the city.[2] This case had been hold in abeyance pending the outcome of Docket No. 21383 in which Channel 253 was requested for assignment to Camp Lejeune, North Carolina. That proceeding was recently dismissed at the request of Francon, Inc., proponent of the Camp Lejeune assignment. A motion to dismiss and opposition to the petition which is now moot was filed by Francon, Inc., to which petitioner responded.

2. Washington (population 8,418),[3] seat of Beaufort County (population 40,266), is located approximately 145 kilometers (90 miles) east of Raleigh, North Carolina. It is served locally by daytime AM Station WEEW, fulltime AM Station WITN and FM Station WITN-FM (Channel 227). Petitioner states that it will apply for Channel 252A, if assigned.

3. Petitioner states that Washington is the largest city in Beaufort County. It further states that Beaufort County's economy is primarily agricultural, however, manufacturing firms employ 23 percent of its labor force. The county is said to be experiencing substantial economic growth. Petitioner states that the proposed channel would bring a much needed FM service to the community and area. In support of the petition it has submitted sufficient demographic and economic information with respect to Washington, which demonstrates the need for an additional FM assignment.

4. Francon, Incorporated has asserted that this petition is in conflict with, and constituted a counterproposal to its petition RM-2814, Docket No. 21383, to assign FM Channel 253 to Camp Lejeune, North Carolina. The cut-off date for filing comments and conflicting assignment proposals was October 17, 1977. Francon had stated that since review of the Commission's decision in that proceeding was still pending, Pamlico Broadcasting Company's petition should be dismissed.

5. Pamlico Broadcasting Company in response, contended that the petition was not a counterproposal since the Camp Lejeune proposal had previously been denied. Rather, Pamlico recognizes that the Camp Lejeune proceeding must be resolved first and urge the Commission to proceed with its requests as expeditiously as possible thereafter.

6. *Preclusion Studies:* Preclusion study demonstrates that a substantial area would be precluded by the proposed assignment. On co-Channel 252A the precluded areas include parts of the following counties; North Carolina: Tyrrell, Washington, Beaufort, Hyde,

[1] Public Notice of the petition was given on August 17, 1979, Report No. 1188.

[2] This restriction is necessary to avoid short spacing to Station WWDR, Murfreesboro, North Carolina.

[3] Population figures are taken from the 1980 U.S. Census.

Pamlico, Carteret, Dare and Craven; on Channel 251, the precluded area includes parts of the Islands of Hatteras and Cape Hatteras (Dare County, North Carolina); on Channel 253 the precluded areas includes parts of the following counties: North Carolina: Duplin, Jones, Onslow, Craven, Carteret and Pamlico. Petitioner should submit a list of alternate available channels to precluded communities of over 1,000 population and without local aural service.

7. The assignment of Channel 252A to Washington would result in intermixing a Class A channel with a Class C channel. The Commission has a policy of permitting such intermixture where, as here, no other Class C channel is available for assignment and the petitioner is willing to apply for the Class A channel, despite the unfavorable competitive situation. Yakima, Washington, 42 F.C.C. 2d 548, 550 (1973); Key West, Florida; 45 F.C.C. 2d 142, 145 (1974).

8. In view of the foregoing information and the fact that the proposed assignment would provide the community an opportunity to develop a second local FM broadcast service, the Commission proposes to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, with regard to Washington, North Carolina, as follows:

City	Channel No.	
	Present	Proposed
Washington, N.C.	227	227, 252A

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

10. Interested parties may file comments on or before January 29, 1982, and reply comments on or before February 16, 1982.

11. The Commission has determined that the relevent provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

12. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division Broadcast Bureau.

Appendix

[BC Docket No. 81-681 RM-3435]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 81-37036 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-874; RM-3931]

FM Broadcast Stations in Devils Lake, North Dakota; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of two Class C channels to Devils Lake, North Dakota, and modification of the license for Station KDVL, operating on Channel 244A, to specify one of the Class C channels, in response to a petition filed by KGPC Company. Significant service to underserved areas could be provided.

DATES: Comments must be filed on or before January 29, 1982, and reply comments on or before February 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: December 14, 1981.

Released: December 17, 1981.

In the matter of Amendment of § 73.202(b), *Table of Assignments*, FM

Broadcast Stations. (Devils Lake, North Dakota), BC Docket No. 81-874, RM-3931.

1. The Commission herein considers a petition filed by KGPC Company ("petitioner"), proposing the assignment of Class C Channel 278 to Devils Lake, North Dakota, as that community's second FM assignment.[1] Petitioner stated its intent to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Devils Lake (pop. 7,442) [2], seat of Ramsey County (pop. 13,048), is located in the northeastern part of North Dakota, approximately 570 kilometers (350 miles) northwest of Minneapolis, Minnesota. It is served by fulltime AM Station KDLR and FM Station KDVL (Channel 244A). The stations have common ownership.

3. According to petitioner, Devils Lake is sufficiently important to warrant a second FM assignment, as more than half of the county's population resides at Devils Lake. It has a full range of stores, professional offices and other facilities which serve the city and the surrounding area. Petitioner contends that the proposed assignment would provide service to underserved areas which are beyond the primary service contours of the Class A station, including the communities of Minnewauken, New Rockford and Lakota, North Dakota. Although the proposal would create an intermixture of Class A and Class C channels, petitioner argues the intermixture is justifiable, since the proposed station would provide services to underserved areas. *Oak Ridge, Tennessee*, 32 FCC 2d 937 (1972).

4. *Preclusion considerations.* The information submitted by the petitioner shows that as a result of the proposed assignment of Channel 278 to Devils Lake, several counties would be precluded from assignments, however, at least one alternate channel would be available in each county.

5. Although it has been the general Commission policy to assign Class C channels only to communities of over 10,000 persons, exceptions have been made when the assignment would result in a large first or second FM service [3] or when the assignment of a Class C channel would enable a large rural area to be served. Since there are few large cities in the coverage area, Class C channels would be appropriate to provide FM service to the area and insure the opportunity for residents to have a choice of FM service. While a Roanoke Rapids-Anamosa showing was not submitted, it appears that the assignment will provide significant first FM service to quite a large area.

6. Because the assignment of one Class C channel would fail to promote the desirable competitive balance we seek to achieve in our policy against intermixture of classes in the same community, we are proposing a second Class C assignment as a substitute for the existing Class A station to avoid intermixture. A study revealed that Channel 273 is available for assignment to Devils Lake. Therefore, to provide the licensee of Channel 244A an opportunity to switch to a Class C channel, we shall propose a second Class C channel for Devils Lake. Since KDVL could be affected if we were to follow this policy, it must be given an opportunity to indicate whether it consents to or is opposed to the proposed change of its channel assignment and this Order to Show Cause is adopted for that purpose. Its general comments on the appropriateness of the proposal are invited.

7. Station KDVL would also be entitled to reimbursement for the reasonable expenses of the change of frequency only, not for the necessary upgrading in facilities. See Mitchell, South Dakota, 62 F.C.C. 2d 701 (1976) and Gillette, Wyoming, Docket 21119, 42 FR 47557 (1977). The reimbursement would come from the ultimate permittee of Channel 278, if assigned.

8. Accordingly, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, with regard to the community below, as follows:

City	Channel No.	
	Present	Proposed
Devils Lake, North Dakota	244A	273, 278

9. It is ordered, that pursuant to Section 316(a) of the Communications Act of 1934, as amended, KDLR, Inc., the licensee of Station KDVL(FM) at Devils Lake, North Dakota, shall show cause why its license should not be modified to specify operation on Channel 273, if the Commission determines that the public interest would be served by adopting the proposed assignment.

10. Pursuant to § 1.87 of the Commission's rules and regulations, Station KDVL(FM) may, not later than January 29, 1982, request that a hearing be held on the proposed modification. Pursuant to Section 1.87(f), if the right to request a hearing is waived, Station KDVL(FM) may, not later than January 29, 1982, file a written statement showing with particularity why its license should not be modified as proposed in this Order to Show Cause. In this case, the Commission may call on Station KDVL(FM) to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the Order to Show Cause. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Station KDVL(FM) will be deemed to consent to modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the channel changes mentioned above are found to be in the public interest.

11. Comments must be filed on or before January 29, 1982, and reply comments on or before February 16, 1982.

12. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

13. It is further ordered, that the Secretary of the Commission shall send a copy of this *Order* by Certified Mail, Return Receipt Requested, to KDLR, Inc., 400 12th Avenue, Devils Lake, North Dakota 58301, the party to whom the Order to Show Cause is directed.

14. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

15. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at

[1] Public Notice of the petition was given on July 17, 1981, Report No. 1299.

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

[3] *Lyons, Kansas*, 42 FCC 2d 215, 216 (1973); *Lexington, Missouri*, 53 FCC 2d 893 (1975).

the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. they will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 81-36934 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-155; RM-3660, RM-3708, RM-3858]

FM Broadcast Stations in Bend and Coos Bay, Oregon; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to substitute Class C FM Channels 239 and 247 for existing Channels 252A and 288A in Coos Bay, Oregon, in response to a petition filed by SGB Broadcasting, Inc.

DATES: Comments must be filed on or before January 29, 1982, and reply comments must be filed on or before Feburuary 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Further Notice of Proposed Rule Making and Order To Show Cause

Adopted: December 14, 1981.

Released: December 17, 1981.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Bend and *Coos Bay*[1] *Oregon); BC Docket No. 81-155, RM-3660, RM-3708 and RM-3858.*

1. Before the Commission is a petition for rule making filed by SGB Broadcasting, Inc., ("petitioner" or "SGB") licensee of broadcast Station KYNG-FM (Channel 288A), Coos Bay, seeking the substitution of Class C FM Channel 289 for its existing assignment. As indicated *infra*, this proposal conflicts with a proposal to assign Channel 289 to Bend, Oregon (RM-3708). The distance between Coos Bay (KYNG site) and Bend is 152 miles, whereas the minimum distance required for Class C co-channel separations is 180 miles, pursuant to § 73.207 of the Commission's Rules. For these reasons,[2] we have proposed herein another channel as a substitute for the Coos Bay proposal. Comments were filed by KBND, Inc., one of the proponents in the Bend, Oregon proceeding (RM-3708), and consolidated reply comments were filed by Sequoia Communications ("Sequoia")[3] and petitioner.

2. Coos Bay (population 14,424)[4] in Coos County (population 64,067), is located approximately 200 kilometers (125 miles) southwest of Salem, Oregon. The community is presently served by full-time AM Station KHSN, daytime-only AM Station KYNG, as well as FM Stations KICR (Channel 252A) and KYNG (Channel 288A).

3. In support of its proposal, petitioner states that it has its own government unit, that it has a prime trading area consisting of approximately 45,000 persons, and that shipping lumber, fishing and tourism are the leading industries of the area. In further support of its proposal, SGB alleges that its unique topography creates a diminution of signal strength and of penetration of FM stations, particularly with respect to the lower-powered Class A stations. As a result, it maintains that many people cannot receive a consistent FM signal from local stations to supply them with needed information such as the area's rapidly changing weather conditions and its consequent effects on the area's leading industries. Additionally, it asserts that outlying communities would benefit by improved radio service as well as providing a greater variety to others.

4. The comments of KBND addressed itself to SGB's proposal to substitute Channel 289 for its present Class A service. Since we have removed Channel 289 from consideration for

[1] This community has been added to the caption.

[2] BC Docket No. 81-155 involves two other rule making petitions (RM-3660 and RM-3708), concerning certain proposals for Bend, Oregon. Subsequent to the issuance of the *Notice* with respect to these petitions, a *Public Notice* was given on March 27, 1981, Report No. 1277, of a rule making petition filed by the proponent herein requesting substitution of Channel 289, one of the same channels proposed in the Bend proceeding. Therein, we advised that its petition would be treated as a counterproposal to the Bend proceeding. However, a staff engineering study has since revealed that the channels proposed for Bend are the only ones available to it, while others are assignable to Coos Bay. Therefore, in order to accommodate all three proposals without a conflict, the Coos Bay petition is being treated separately from the Bend proposals in this docketed proceeding.

[3] Sequoia's interest in supporting the SBG proposal stems from the fact that the two have substantially the same ownership, Sequoia being the licensee of AM Station KYNG, in Coos Bay.

[4] Population figures are extracted from the 1980 U.S. Census.

assignment to Coos Bay, its comments are moot and therefore no discussion of its merits is warranted herein.

5. The substitution of a Class C channel for Channel 288A in Coos Bay would create intermixture with Station KICR (Channel 252A), the other Class A station currently operating in the community. To avoid intermixture, the Commission generally attempts to upgrade the Class A station to Class C facilities by assigning a second Class C channel and modifying the Class A station's license. A staff study indicates in this instance that Channels 239, 247 and 293 are available to Coos Bay without site restrictions. However, Channels 239 and 293 cannot both be assigned due to IF considerations. Therefore, in order to accommodate this proposal, we shall propose to assign both Channels 239 and 247 to Coos Bay, and further propose to modify the license of Station KICR to specify operation on Channel 239, and that of KYNG to Channel 247.

6. Whenever an existing licensee is required to change frequencies to accommodate a new assignment, we require the permittee of the new assignment to reimburse the station for the costs incurred in changing frequencies. Petitioner should therefore indicate whether it would be willing to reimburse Station KICR for its costs in changing frequencies to Channel 239. Reimbursement is not required for the expenses needed to upgrade the station's facilities to Class C status. *See, Mitchell, South Dakota*, 62 F.C.C. 2d 70 (1976).

7. Under these circumstances, we would need an expression of interest in the proposed channel and power change, and a commitment from the licensee of KICR, Intercontinental Ministries, to make that change if this proposal is adopted. Also, Station KYNG should express whether it is interested in the proposal to modify its license to specify operation on Channel 247 in response to this *Order to Show Cause*. Pursuant to our decision in *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976), should another interest be expressed in either of the Class C channels, the modifications may not be made. Instead, the opportunity for the filing of competing applications may be necessary.

8. A preclusion study should be submitted to indicate those communities containing populations in excess of 1,000 persons which would be precluded by the assignment of Channels 239 and 247 to Coos Bay. For those so precluded and presently without local aural service, a listing of alternate channels which could be assigned to those communities should also be provided.

9. Additionally, if petitioner wishes to support its request for a Class C channel at Coos Bay, a *Roanoke Rapids/ Anamosa* [5] showing should be submitted to demonstrate whether the Class C proposal herein would cover any unserved and underserved areas, and, if so, the extent thereof in terms of area and populations expected to receive such services.

10. Accordingly, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with regard to Coos Bay, Oregon, as follows:

City	Channel No.	
	Present	Proposed
Coos Bay, Oregon	252A, 288A	239, 247

11. It is ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, Intercontinental Ministries, the licensee of Station KICR (FM), Coos Bay, Oregon, shall show cause why its license should not be modified to specify operation on Channel 239 in lieu of Channel 252A, if the Commission determines that the public interest would best be served by adopting the proposed assignments.

12. Pursuant to § 1.87 of the Commission's Rules, Intercontinental Ministries may, not later than January 29, 1982, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Intercontinental may, not later than January 29, 1982, file a written statement showing with particularity why its permit should not be modified as proposed in the Order to Show Cause. In this case, the Commission may call on Intercontinental to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the Order to Show Cause. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Intercontinental will be deemed to have consented to the modifications as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above channel modifications are ultimately found to be in the public interest.

13. It is further ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, SGB Broadcasting, Inc., licensee of Station KYNG(FM), Coos Bay, Oregon, shall show cause why its license should not be modified to specify operation on Channel 247 in lieu of Channel 288A, if the Commission determines that the public interest would best be served by adopting the proposed assignments.

14. Pursuant to § 1.87 of the Commission's Rules, SGB Broadcasting, Inc. may, not later than January 29, 1982, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, SGB Broadcasting, Inc. may, not later than January 29, 1982, file a written statement showing with particularity why its permit should not be modified as proposed in the Order to Show Cause. In this case, the Commission may call on SGB to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the Order to Show Cause. If the right to request a hearing is waived and no written statement is filed by the date referred to above, SGB will be deemed to have consented to the modifications as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above channel modifications are ultimately found to be in the public interest.

15. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

16. Interested parties may file comments on or before January 29, 1982, and reply comments on or before February 16, 1982.

17. It is further ordered, That the Secretary of the Commission shall send by certified mail, return receipt requested, a copy of this Further Notice and Order to Show Cause to Intercontinental Ministries, Inc. 3000 Market Street, Suite 541, Coos Bay, Oregon, and to SGB Broadcasting, Inc., c/o P.O. Box 10J9, Ross, California 94958.

18. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. *See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the*

[5] *Roanoke Rapids, Goldsboro, N.C.*, 9 F.C.C. 2d 672 (1967); *Anamosa, Iowa*, 46 F.C.C. 2d 520 (1974).

Commission's Rules, 46 FR 11549, published February 9, 1981.

19. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceeding, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 81-36935 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-884; RM-4007]

FM Broadcast Station in Wichita Falls, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 292A to Wichita Falls, Texas, in response to a petition filed by Broadco, Incorporated. The assignment would provide Wichita Falls with a fourth FM allocation.

DATES: Comments must be filed on or before January 29, 1982, and reply comments must be filed on or before February 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: December 15, 1981.

Released: December 22, 1981.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Wichita Falls, Texas), BC Docket No. 81-884, RM-4407.

1. A petition for rule making was filed by Broadco, Incorporated ("petitioner"), seeking the assignment of Channel 292A to Wichita Falls, Texas, as that community's fourth FM allocation. The assignment can be made consistent with the minimum distance separation requirements of § 73.207 of the Commission's rules.

2. Wichita Falls (population 94,201),[1] the seat of Wichita County (population 121,082), is located near the Texas-Oklahoma border, approximately 192 kilometers (120 miles) northwest of Dallas, Texas. It is currently served by three FM stations (KBID, Channel 225; KKQV, Channel 277; and KLUR, Channel 260), as well as three full-time AM stations (KNIN, KTRN and KWFT).

3. Petitioner states that Wichita Falls is the hub for several major U.S. and state highways, and is well served by a multiplicity of transportation services. According to petitioner, the community is the center of trade for a 28-county agricultural region, with income in excess of $200 million. Additionally, numerous industrial concerns in Wichita Falls employ a work force in excess of 5,600. Oil and gas production in the area also contribute to Wichita Falls' economic base. Petitioner also advises that the community is the location of Sheppard Air Force Base, wherein over 13,000 persons reside. It notes that Wichita Falls has its own government unit, municipal services, schools, health care accommodations, financial institutions, a library, churches, hostelries, recreational and cultural facilities. Additionally, there are two daily newspapers available to the residents of Wichita Falls.

4. Petitioner did not submit a preclusion study for the proposed assignment herein. The purpose of such a study is to put other communities on notice that the opportunity to receive an FM assignment may be foreclosed. Therefore, petitioner should provide, in supporting comments, such a study indicating those communities containing a population in excess of 1,000 persons, and presently without any aural service, that would sustain preclusion as a result of the proposed assignment. Additionally, a list of alternate available channels for assignment to each such affected community should be supplied.

5. The assignment of Channel 292A to Wichita Falls would result in intermixing a Class A channel in a community consisting of Class C stations. However, petitioner appears to be willing to apply for and operate on a Class A channel in spite of any unfavorable competitive situation which may result. Therefore, intermixture is not an obstacle to the proposal. *See.*

[1] Population figures are obtained from the 1980 U.S. Census, Advance Reports.

Yakima, Washington, 42 F.C.C. 2d 548, 550 (1973); Key West, Florida, 45 F.C.C. 2d 142, 145 (1974).

6. In order to give further consideration to the request, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, as follows:

City	Channel No.	
	Present	Proposed
Wichita Falls, Texas	225, 260, 277	225, 260, 277, 292A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before January 29, 1982, and reply comments on or before February 16, 1982.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 81-884 FR-4007]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rule and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 81-37037 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 46, No. 249
Tuesday, December 29, 1981

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 Public Access and Information; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–163), notice is hereby given of a meeting of the Committee on Public Access and Information of the Administrative Conference of the United States, to be held at 9:30 a.m., Tuesday, January 12, 1982, in the Library of the Administrative Conference, 2120 L Street, NW., Washington, D.C.

The Committee will meet to discuss the scope of any response by the Committee to proposed recommendations of the ACUS Committee on Regulation of Business on the subject of the treatment of confidential business information under the FOIA.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Michael W. Bowers (202–254–7065). Minutes of the meeting will be available on request.

Richard K. Berg,

General Counsel.

December 21, 1981.

[FR Doc. 81-36976 Filed 12-28-81; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Availability of Surplus Cheese

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Food and Nutrition Service announces that it will provide at least 30 million pounds of surplus process cheese to requesting State agencies for distribution to eligible recipients.

FOR FURTHER INFORMATION CONTACT: Darrel Gray, Director, Food Distribution Division, Food and Nutrition Service, Park Office Center, Alexandria, Virginia 22302.

DATE: Reqests for allocations of cheese must be submitted by February 1, 1982.

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service will provide at least 30 million pounds of process cheese to agencies of State governments which request it for distribution to eligible recipients. The Department will pay the cost of transporting the cheese from Federal storage facilities to centralized storage facilities of recipient State agencies. State agencies will be responsible for arranging and financing distribution of the cheese within the State.

The cheese is being offered under the provisions of section 416 of the Agriculture Act of 1949 and section 1114 of the Agriculture and Food Act of 1981. It may be used only in nonprofit school lunch programs, nonprofit summer camps for children, and other child nutrition programs providing food service, in nutrition projects operating under authority of the Older Americans Act of 1965, including congregate nutrition sites and providers of home-delivered meals, in assistance to needy persons, and in charitable institutions, including hospitals, to the extent that needy persons are served.

Distribution to needy persons for use in the preparation of meals in the home may be made only through food banks participating in the program established under section 211 of the Agriculture Act of 1980. State agencies wishing to distribute cheese for this use will be required to assist the Department in designating food banks for participation in that program.

State agencies will not be allowed to impose any charge for the cheese or the cost of distributing it.

State agencies participating in this distribution of cheese will be required to enter into an agreement with the Food and Nutrition Service embodying the terms and conditions under which the cheese is being provided. A copy of the agreement may be obtained from the appropriate Regional Administrator, Food and Nutrition Service. Agencies wishing to participate in the distribution should advise the appropriate Regional Administrator of their interest and of the amount which they would like to receive, in writing, by February 1, 1982. If requests for cheese exceed the amount available, the cheese will be allocated among the States on the basis of State population.

David B. Alspach,

Acting Administrator, Food and Nutrition Service.

December 23, 1981.

[FR Doc. 81-37089 Filed 12-28-81; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

Buckeye Power, Inc., Columbus, Ohio; Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $27,000,000 to Buckeye Power, Inc., (Buckeye) of Columbus, Ohio. This loan guarantee will be used to finance miscellaneous capital improvements and replacements for Cardinal Station Units Nos. 2 and 3 and for common facility improvements.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Robert N. Cleveland, Manager, Buckeye Power,

Inc., P.O. Box 29149, Columbus, Ohio 43229.

In order to be considered, proposals must be submitted on or before January 28, 1982, to Mr. Cleveland. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received as Buckeye and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 21st day of December 1981.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 81-37067 Filed 12-28-81; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Antlers Airport Road; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Roland R. Willis, State Conservationist, Agricultural Center Building, Stillwater, Oklahoma 74074, telephone number (405) 624–4360.

Notice

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Antlers Airport Road RC&D project, Pushmataha County, Oklahoma.

The environmental assessment of this federally assisted action indicates that the action will not cause significant impacts to the human environment. As a result of these findings, Mr. Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this action.

The project action involves enhancing the environment by reducing erosion, stabilizing rights-of-way, reducing sediment inflow to streams and improving the appearance and safety of county roads and rights-of-way.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Roland R. Willis. The FONSI has been sent 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.

No administrative action on implementation of the proposal will be taken until January 28, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–05 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: December 11, 1981.

Billy R. Littlefield,

Assistant State Conservationist (Programs).

[FR Doc. 81-36665 Filed 12-28-81; 8:45 am]

BILLING CODE 3410-16-M

Parkhurst Siding-Caribou Watershed Project, Maine; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Billy R. Abercrombie, State Conservationist, Soil Conservation Service, USDA Office Building, University of Maine, Orono, Maine 04473, telephone (207) 866–2132.

Notice

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Parkhurst Siding-Caribou Watershed, Aroostook County, Maine.

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. Billy R. Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Billy R. Abercrombie. An environmental impact appraisal has been prepared and sent to various Federal, State and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until January 28, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.

Dated: December 19, 1981.

Billy R. Abercrombie,

State Conservationist.

[FR Doc. 81-36613 Filed 12-28-81; 8:45 am]

BILLING CODE 3410-16-M

Sans Bois Creek Watershed, Oklahoma; Availability of a Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, Agricultural Center Building, Farm Road and Brumley Street, Stillwater, Oklahoma 74074, telephone 405–624–4360.

Notice

Roland R. Willis, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Oklahoma, is hereby providing notification that a record of decision to proceed with the installation of the Sans

Bois Creek Watershed project is available. Single copies of this record of decision may be obtained from Roland R. Willis at the above address.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: December 18, 1981.

Donald R. Vandersypen,

Assistant State Conservationist (WR).

[FR Doc. 81-36684 Filed 12-28-81; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Order 81-12-136; Docket 32484, etc.]

Frontier Airlines, et al.; Order Amending Subsidy Mail Rate Orders

Order 81-12-136, Docket 32484, for Frontier Airlines, Ozard Air Lines, Piedmont Aviation, Republic Airlines, and Republic Airlines West, Order 81-12-137, Docket 40329, for Air Midwest, Order 81-12-138, Docket 40330, for Alaska Airlines, Order 81-12-139, Docket 40331, for Kodiak-Western Alaska Airlines, Order 81-12-140, Docket 40332, for Sky West Airlines, and Order 81-12-141, Docket 40333, for Wien Air Alaska, all dated December 22, 1981, amend their section 406 subsidy rate orders to add language to replace the subsidy-related restrictions and conditions currently contained in their certificates. Copies of the orders are available from the Civil Aeronautics Board Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-37062 Filed 12-28-81; 8:45 am]

BILLING CODE 6320-01-M

[Order 81-12-128; Docket 40300]

Scandinavian Airlines System; Proposed Non-Affinity Group Fares From Denmark, Norway and Sweden to Florida

Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 11th day of December 1981.

On November 24, 1981 Scandinavian Airlines System (SAS) filed tariff revisions proposing reductions of 8-21 percent in non-affinity group fares from various Scandinavian points to Miami, Ft. Lauderdale, Orlando and Tampa, for effectiveness December 24, 1981.[1]

We have decided to suspend this filing. While the Board, for its part, generally eschews regulation of discount fares, recent actions of the Scandinavian Governments denying fare filings of U.S. carriers have severly hampered their ability to compete in the Scandinavian market, and require us to scrutinize SAS fare proposals more closely than we would otherwise prefer.

The actions of Denmark, Norway and Sweden have severely restricted the price/quality options available to U.S./Scandinavia passengers and imposer a higher array of fares than would otherwise exist. Therefore we are not inclinded to give sympathetic consideration to SAS fare proposals at this time.

Although we continue to hope for an acceptable resolution of U.S.-Scandinavian pricing difficulties through negotiation, under present circumstances we have no choice but to find that it is in the public interest to suspend SAS' filing.

Accordingly, pursuant to sections 102, 204(a), 403, 801 and 1002(j) of the Federal Aviation Act of 1958, as amended:

1. We shall institute an investigation to determine whether the fares and provisions set forth in the Appendix hereof, and rules and regulations or practices affecting such fares and provisions, are or will be unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful or contrary to the public interest; and if we find them to be unlawful or contrary to the public interest, to act appropriately to prevent the use of such fares, provisions or rules, regulations or practices;

2. Pending hearing and decision by the Board, we suspend and defer the use of the fares named in the Appendix from December 24, 1981, to and including December 23, 1982, unless otherwise ordered by the Board, and shall permit no changes to be made therein during the period of suspension except by order or special permission of the Board;

3. We shall submit this order to the President [2] and unless disapproved by the President it shall become effective on December 24, 1981; and

4. We shall file copies of this order in the aforesaid tariff and serve them on Scandinavian Airlines System and the Ambassadors of Denmark, Norway and Sweden in Washington, D.C.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,[3]

[FR Doc. 81-37063 Filed 12-28-81; 8:45 am]

BILLING CODE 6320-01-M

[1] SAS does not have the authority to serve Florida; instead, it would interline with U.S. domestic carriers at New York.

[2] We submitted this order to the President on December 11, 1981.

[3] All Members concurred.

[Order 81-12-110; Docket 40156]

Transportes Aereos Mercantiles Panamericanos S.A. "TAMPA S.A."; Application

Order Granting Exemption in Part

Issued under delegated authority December 18, 1981.

By application filed October 20, 1981, Transportes Aereos Mercantiles Panamericanos S.A. "TAMPA S.A." requested an exemption from section 402 of the Act to permit it to engage in scheduled and charter foreign air transportation of property between Miami, Florida and the Colombian points Barranquilla, Bucaramanga, Cali, Cartagena, Leticia, and San Andres.[1]

In support of its request, TAMPA stated that there is a continuing need for improved cargo service between Miami and points in Colombia, and that its home government had recently designated it, under the terms of the bilateral aviation agreement between the United States and Colombia, to provide service in the requested markets. TAMPA also stated that it would file, in the near future, an application for permit authority to conduct these services.

No answers to TAMPA's application were filed.

On November 20, 1981, the staff, acting under delegated authority, granted TAMPA the requested exemption to conduct scheduled operations (subject to conditions) for a period of one year or until 90 days after final Board action on its application for similar permit authority, whichever occurs first. We also dismissed TAMPA's request for exemption authority to conduct cargo charter operations in these markets. We confirm those actions here.

In granting TAMPA the requested scheduled authority, we noted that on August 5, 1981, TAMPA was designated by Colombia, under the terms of the *Air Transport Agreement between the*

[1] TAMPA holds a foreign air carrier permit, issued by Order 81-4-95, authorizing it to engage in foreign air transportation of property between Medellin and Bogota on the one hand, and Miami on the other. This permit also authorizes TAMPA to conduct cargo charters under the Board's regulations.

Government of the United States and the Government of the Republic of Colombia, to provide these services.[2] We also noted that grant of this authority would enable TAMPA to expand its cargo services between Miami and Colombia, to the benefit of the shipping public, and that no U.S. carrier objected to TAMPA's request for this authority. Finally, we found that TAMPA is qualified to perform these operations, as they are of the same nature as those now being conducted by the carrier under its foreign air carrier permit.

We made this scheduled authority subject to the applicable terms and conditions of TAMPA's foreign air carrier permit, and also advised the carrier that we expected it to file, within 30 days of our action, an application requesting permit authority for these operations.

As a final matter, our decision to dismiss TAMPA's request for cargo charter authority was based on the fact that TAMPA already holds authority to operate cargo charters (including charters in the markets at issue here) under the terms of its present permit, subject to the requirements of Part 212 of the Board's Economic Regulations.[3] Thus, its request for charter authority by exemption appeared unnecessary.[4]

In view of the above, and acting under authority delegated by the Board in its Regulations, 14 CFR 385, we found that the requested exemption, to the extent granted and as conditioned, was consistent with the public interest, and that our action was not a major regulatory action under the Energy Policy and Conservation Act of 1975. Our action was not an endorsement by the Board that the authorized operations are hardships qualifying TAMPA for fuel under any fuel allocation program.

Accordingly,

1. We confirm our verbal actions of November 20, 1981, (1) granting TAMPA an exemption from section 402 of the Act to permit it to engage in scheduled foreign air transportation of property between Miami, Florida and the Colombian points Barranquilla, Bucaramanga, Cali, Cartagena, Leticia, and San Andres, subject to the applicable terms and conditions of the carrier's foreign air carrier permit; and (2) dismissing that portion of TAMPA's request seeking authority to conduct cargo charter operations in these markets;

2. The authority granted above shall be effective for a period of one year from the date of this order or until 90 days after final Board action on an application by TAMPA for permit authority to conduct these operations, whichever comes first; and

3. We may amend or revoke this order at any time and without hearing.

Persons entitled to petition the Board for review of this order under the Board's Regulations, 14 CFR 385.50, may file their petitions within ten days after the date of service of this order.

This order shall be effective immediately, and the filing of a petition for review shall not preclude such effectiveness.

Daniel M. Kasper,

Director, Bureau of International Aviation.

Phyllis T. Kaylor,

Secretary

[FR Doc. 81-37001 Filed 12-28-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40208]

Interpretation; Authorization To Serve U.S. Points

AGENCY: Civil Aeronautics Board.

ACTION: Interpretation.

SUMMARY: The CAB interprets the Federal Aviation Act as no longer permitting it to specify terminal and intermediate points on airline certificates authorizing domestic air transportation of persons and not requiring it to list the points for which an airline is authorized to provide cargo and mail service. This action clears the way for airlines to provide service to any point in the U.S. without obtaining CAB approval.

DATES: Adopted December 22, 1981. Effective: January 1, 1982.

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

SUPPLEMENTARY INFORMATION: The Board requested comments on its interpretation of the Federal Aviation Act as not requiring it to list each domestic point an airline is authorized to serve on its certificate (46 FR 55294, November 9, 1981). That action was prompted by section 1601(a)(1)(C) of the Act, which prohibits the Board from specifying terminal and intermediate points in section 401 certificates authorizing interstate and overseas air transportation of persons. Because section 1601, by its terms, applies only to air transportation of persons, airlines have been faced with the prospect of having unlimited passenger authority but being restricted to the points listed in their certificate when cargo or mail is carried on their passenger aircraft. In the Board's view, this made little sense and appeared to be inconsistent with the policies of the Cargo Deregulation Act of 1977 (Pub. L. 95-163) and the Airline Deregulation Act of 1978 (Pub. L. 95-504).

To avoid these problems and further the course of airline deregulation, consistently with Congressional intent, the Board reviewed the requirements of section 401(e)(1) (the provision that requires the Board to specify terminal and intermediate points in certificates), and tentatively decided that that section does not mandate an individual listing of each terminal and intermediate point an air carrier is permitted to serve. Rather, the Board concluded that starting January 1, 1982, when certificated carriers' authority will include all points in the United States, its territories, and possessions, describing the carriers authority as covering that whole area will satisfy the requirements of section 401(e)(1).

As support for this interpretation, the Board relied on the policies of section 102(a)(10), 102(b), and 418 of the Act. These provisions call for the air transportation system to be based on competition and free entry in both the passenger and cargo fields. The Board noted, however, that special statutory attention has been given to Alaska and Hawaii. Specifically, section 418(b)(3) prohibits the Board from granting unlimited authority for all-cargo (i.e. freighter) air transportation between points within Alaska and Hawaii. The Board therefore proposed to continue to list points individually on section 401 certificates authorizing all-cargo air service in Alaska and Hawaii. The effect of this interpretation is to continue to limit a carrier's all-cargo service within Alaska and Hawaii to the points listed in its certificate while permitting passenger or combination service anywhere in those States or elsewhere in the United States. It broadens carrier authority with respect to passenger and combination service and maintains the status quo with respect to all-cargo service in Alaska and Hawaii.

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[2] The Agreement, effective January 1, 1957, provides, among other things, that carriers of Colombia may be designated to conduct services between any points in Colombia and a number of U.S. points, including Miami.

[3] By Order 81-5-44 the Board required TAMPA to seek individual Statements of Authorization, under section 212.4, for all charters between its homeland and the United States. However, TAMPA retains the underlying permit authority to conduct charters in this market, subject to the prior approval requirement.

[4] Prior to taking this action, we discussed our proposed dismissal of TAMPA's request for charter authority with TAMPA's counsel, who advised us that the carrier did not object to such dismissal.

The Postal Service objected to this interpretation on the grounds that it would have been a simple matter for Congress to have included property and mail in the sunset provisions of section 1601 if it had so intended. Since it did not do so, in the Postal Service's view, it must have intended that the listing of property and mail points in certificates should continue. The Postal Service asserted that there are strong indications in the Congressional action that it did not intend to include mail in the deregulation effected by section 1601.

The Postal Service also claimed that the issuance of an "all points" certificate would adversely affect the transportation of mail by air under 39 U.S.C. 5402(b). Section 5402 authorizes the Postal Service to contract for the transportation of mail by airlines. Paragraph (a) of that section permits such a contract with a carrier for mail service between points that the carrier is authorized to serve by its certificate. Contracts under this paragraph are subject to several limitations on the percent of letter mail and pounds per flight that may be carried. Paragraph (b) of section 5402 authorizes the Postal Service to contract with a mail carrier for mail service between points that no carrier is authorized to serve by its certificate. These contracts are not subject to similar limitations. Since, under our interpretation, carriers would be authorized to serve any domestic point, the Postal Service contended that its authority under section 5402(b) would be effectively nullified and it would be prevented from contracting with carriers under that provision.

We do not accept the Postal Service's restrictive reading of the Federal Aviation Act. The absence of any reference to property and mail in section 1601 does not necessarily mean that Congress meant to continue to restrict carriers' property and mail service to the points listed in their certificates. It is equally likely that Congress considered this matter to have been settled by the Cargo Deregulation Act of 1977, and that the lack of any reference in section 1601 to property and mail was therefore not meaningful. It is interesting to note in this regard that the Conference Report explanation of section 1601 does not contain the reference exclusively to persons but refers merely to "interstate and overseas air transportation." In any case, our interpretation relies on section 401(e)(1) rather than on section 1601. Section 401(e)(1) does not call for any special treatment of property and mail.

This interpretation does not render section 5402 of the Postal Reorganization Act a nullity. That provision may still apply to mail service to foreign points. An air carrier's certificate will continue to list points for which foreign air transportation is authorized. There is nothing in this interpretation that would prevent the Postal Service from contracting with a carrier under section 5402(b) for mail service to other foreign points. Domestically, mail that is transported under section 5402(b) may be carried under sections 5401, 5402(a), or 5402(c). The Postal Service agrees that these provisions are not affected by our intrepretation.

The Postal Service's interpretation would, however, undermine the goals of the sunset provisions of the Act. These, particularly section 1601(a)(1)(C), were enacted to permit airlines to fly the routes they wish without first having to obtain some action from the Board. Since most airlines transport mail in conjunction with passenger service, the Postal Service interpretation requiring the listing of mail points would effectively force airlines to apply to the Board every time they wanted to begin service to another community. This would be necessary in order for them to be able to transport mail in their passenger aircraft.

The overall Congressional purpose of the Federal Aviation Act of 1958, as amended by the Cargo and Airline Deregulation Acts, is to relieve burdens and to reduce government regulation. In our view, our interpretation furthers this goal and is consistent with the pro-competitive policies of the Act. We are therefore adopting our interpretation as proposed. The Air Transport Association of America filed comments supporting our approach. Other issues raised in the comments are addressed in the order reissuing air carriers' section 401 certificates.

Accordingly, the Board interprets the Federal Aviation Act as not requiring, except for foreign air transportation and all-cargo air service in Alaska and Hawaii, a listing on a section 401 certificate of each domestic point that an air carrier is authorized to service.

(Secs. 401, 418, 1601, Pub. L. 85-726, as amended, 72 Stat. 754, 91 Stat. 1284, 92 Stat. 1744, 49 U.S.C. 1371, 1388, 1551)

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-37060 Filed 12-28-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Wholesale Trade; Determination

In conformity with title 13, United States Code, sections 182, 224, and 225 and due Notice of Consideration having been published November 2, 1981 (46 FR 54395), I have determined that data covering year-end inventories and annual sales are needed to aid the efficient performance of essential government functions and such data are not publicly available from nongovernmental or other governmental sources. The Bureau has received information and recommendations indicating that the data will have significant application to the needs of the public, the distributive trades, and governmental agencies.

Only a selected sample of merchant wholesale firms (probability of selection is based on firm size) operating in the United States will be requested to report information covering their December 31, 1981 merchandise inventories and their 1981 annual sales. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau will send report forms to firms covered by the survey. Interested persons may obtain copies of the forms by writing to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that this annual survey be conducted for the purpose of collecting these data.

Dated: December 23, 1981.

Bruce Chapman,

Director, Bureau of the Census.

[FR Doc. 81-38976 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Fabrite Laminating Corporation, 70 Passaic Street, Wood-Ridge, New Jersey 07075, producer of laminated fabrics (accepted November 25, 1981); (2) Par-Knit Mills, Inc., Industrial Park, Mifflinburg, Pennsylvania 17844, producer of men's, women's and children's tops, shirts and warm-up suits (accepted November 27, 1981); (3) John W. Brooks, Inc, 45 Canal Street, Nelsonville, Ohio 45764, producer of footwear for men, women and boys

(accepted November 30, 1981); (4) Haas Tailoring Company, 3425 Sinclair Lane, Baltimore, Maryland 21213, producer of men's suits, vests, and pants (accepted December 1, 1981); (5) Becker Electronics Manufacturing Corporation, Route 145, East Durham, New York 12423, producer of loudspeakers (accepted December 4, 1981); (6) Kenasco Corporation, P.O. Box 390, Prosser, Washington 99350, producer of food-processing equipment (accepted December 7, 1981); (7) Koehn Manufacturing, Inc., 1800 14th Avenue, NW., Watertown, South Dakota 57201, producer of agricultural machinery (accepted December 8, 1981); (8) JoMac Products, Inc., 12702 Northeast 124th Street, Kirkland, Washington 98033, producer of radio-controlled model cars and accessories (accepted December 8, 1981); (9) Colsoff Manufacturing Company, 6540 Huntley Road, Columbus, Ohio 43229, producer of whistles and horns (accepted December 9, 1981); (10) Barone Crystal Limited, 14350 Lake City Way, N.E., Seattle, Washington 98125, producer of crystal housewares (accepted December 12, 1981); and (11) Ehrhardt Manufacturing Company, Box 5, Ehrhardt, South Carolina 29081, producer of women's dresses, tops, skirts, body suits and swimwear (accepted December 18, 1981).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Insofar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Charles L. Smith,

Acting Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 81-36952 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-25-M

Animal Glue and Inedible Gelatin From West Germany; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany. The review covers eight of the nine known exporters of this merchandise to the United States, and separate time periods for each through November 30, 1980. This review indicates the existence of dumping margins in particular periods for certain exporters.

As a result of the review, the Department has preliminarily determined to assess dumping duties for individual exporters equal to the calculated differences between United States price and foreign market value on each of their shipments during the periods of review. Where company-supplied information was inadequate the Department has used the best information available. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 29, 1981.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202–377–4106/5289).

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1977, a dumping finding with respect to animal glue and inedible gelatin from West Germany was published in the **Federal Register** as Treasury Decision 78–1 (42 FR 64116). On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antidumping Act of 1921 ("the 1921 Act") with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the **Federal Register** of March 28, 1980 (45 FR 20511–12) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act, the Department has conducted an administrative review of the finding on animal glue and inedible gelatin from West Germany. The substantive provisions of the 1921 Act and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by this review are animal glue and inedible gelatin, of which there are two principal types, hide glue and bone glue. They are organic colloids of protein derivation. There is no significant difference between animal glue and inedible gelatin. Animal glues are odorless, dry, hard, hornlike materials. They are used as general purpose adhesives in industries producing abrasives, paper containers, book and magazine bindings, and leather goods. They are also used as sizing agents, as an essential part of many compositions, and as colloids in emulsions and cleaning compounds.

Animal glue and inedible gelatin are currently classifiable under items 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of a total of nine West German firms engaged in the production and exportation of animal glue and inedible gelatin to the United States. This review covers eight of the firms and various periods through November 30, 1980. Treasury reviewed all prior periods.

Two firms, Chemische Dungerfabriek Rendsburg, GmbH ("Rendsburg") and G. Conradt & Sohn ("Conradt"), have not shipped since the time of the fair value investigation. For these two firms their fair value weighted-average margins shall be used for cash deposit purposes. For a third firm, Johannes Martens, KG ("Martens"), which did not ship during the current period, its cash deposit rate shall be based on the weighted-average margin found on its last shipment. A fourth firm provided an inadequate response. This firm, Deutsch Gelatin Fabrieken Stoess & Co. ("Stoess"), formerly Schneidmendal in Minden, claimed it does not produce animal glue and inedible gelatin, but the Department

has evidence that Stoess sold such merchandise to Gould-Metall, GmbH ("Gould"), which in turn exported it to the U.S. For both firms, we shall use for both assessment and deposit purposes the highest fair value rate, which is higher than the current rate for responding firms with shipments. The Department has been unable to locate the sixth firm, Animal Produkten; for this firm we shall use for both assessment and deposit purposes its fair value rate. The two remaining firms, Carl Weiss ("Weiss") and Fritz Hacker ("Hacker"), provided adequate responses for analysis. The ninth firm, Nienburger Gelatin, will be covered in a subsequent review.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act or section 203 of the 1921 Act, as appropriate. Purchase price was based on the CIF price to unrelated purchasers in the United States. Where applicable, deductions were made for foreign inland freight, ocean freight, and marine insurance. No other adjustments were claimed or made.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act or section 205 of the 1921 Act, as appropriate, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. For both Hacker and Weiss at least 55 percent of their total production was sold in the home market, and home market sales were at least 58 percent of all sales for export to countries other than the U.S. during the period covered. Home market prices were based on ex-factory or free customer's factory, packed prices. Adjustments were made for inland freight, cash discounts, and for an oil bunker surcharge, where appropriate. No other adjustments were claimed or made.

Preliminary Results of the Review

As a result of our review, we preliminary determine that the following margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
Rendsburg	5/5/79-11/30/80	[1] 158.00
Martens	7/1/78-12-31-78	0
	1/1/79-11/30/80	[1] 0
Conradt	5/2/79-11/30/80	[1] 67.00
*Stoess/Gould	1/1/78-11/30/80	158.00
Hacker	6/1/78-11/30/80	0
Weiss	5/1/78-12/31/78	22.64
	1/1/79-12/31/79	9.25
Animal Produkten	1/1/80-11/30/80	16.34
	9/1/78-11/30/80	100.00

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results on or before January 28, 1982 and may request disclosure and/or a hearing on or before January 13, 1982. Any request for an administrative protective order must be made no later than January 4, 1982. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all entries, as appropriate, made with purchase dates during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions separately on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit based upon the most recent of the margins calculated above shall be required on all shipments of animal glue and inedible gelatin from West Germany by these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-37041 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-25-M

Imported Steel Mill Products Trigger Price Mechanism: Monitoring of Specialty Steel Imports

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In monitoring specialty steel imports, on a product line basis, for surges possibly caused by dumping or subsidization, the Department of Commerce has determined that surge conditions currently exist in four of the six product lines monitored, stainless steel sheet and strip, bar, pipe and tube, and alloy tool steel. Surge conditions do not currently exist in the category of stainless steel plate. While surge conditions do not yet exist in the stainless steel rod category, the import situation warrants particular attention during the coming months.

FOR FURTHER INFORMATION CONTACT: Ms. Terry Link, Import Administration, U.S. Department of Commerce, Room 1001, Washington, D.C. 20230, (202) 377-3793.

SUPPLEMENTARY INFORMATION: On January 8, 1981 the Department of Commerce announced the Administration's decision to monitor imports of specialty steel products for surges apparently caused by unfair trade practices. This is the fourth of a series of quarterly reviews which the Department will issue, based upon its assessment of the specialty steel import situation. The last review was published on October 15, 1981 (46 FR 50816). This review includes a detailed listing of the specific Tariff Schedules of the United States Annotated (TSUSA) categories included in the Department's monitoring procedures and discusses import trends in six major specialty steel product lines.

By monitoring specialty steel imports for surges possibly caused by dumping or subsidization, the Department will be in a position to enforce promptly the trade laws of the United States, in a manner consistent with our international obligations, in cases where the imports could be causing material injury to our industry.

If the Department of Commerce finds that a surge in specialty steel imports appears to be the result of unfair competition, an anti-dumping or countervailing duty investigation could be initiated. No action will be taken where the surge appears to be the result of fair competition. The monitoring system is deisgned to ensure enforcement of the trade laws, not to set or imply import quantity or price levels.

The major product lines monitored by the Department are stainless steel sheet and strip, plate, bar, rod, pipe and tube, and alloy tool steel. A surge exists when, on a product line basis (1) imports as a percent of domestic consumption rise above the average levels for the past ten years and (2) the import penetration trend is clearly toward the levels at which the U.S. International Trade Commission (USITC) found injury in the 1976 escape clause case.

An outline of the major factors noted in the Department's fourth quarterly review follows. This review is based

primarily upon quarterly data for the third calendar quarter of 1981. It also take into account quarterly levels for previous years, and the ten-year weighted averages of 1971 through 1980. More detailed data are presented in the Appendix to this notice, including a listing of the specific TSUSA import categories covered in the monitoring procedures.

For the category of stainless steel sheet and strip, surge conditions exist, as demonstrated by the fact that the third calendar quarter 1981 level of import penetration (the share of U.S. apparent consumption accounted for by imports) was 10.7 percent. This is above the 1971 through 1980 ten-year weighted average of 9.5 percent and is above any quarterly import penetration level since the second quarter of 1978. The import penetration level for the third quarter of 1981 was above the first and second quarter 1981 levels of 5.2 and 7.3 percent, respectively, and is above the third quarter 1980 level of 6.3 percent.

During the third quarter of 1981, imports of stainless steel sheet and strip from France rose to a level of 2.4 percent import penetration, its highest level since the fourth quarter of 1977. This figure was a significant increase over both the 1.2 and 1.3 percent import penetration levels during the first and second quarters of 1981, respectively. Imports of stainless steel sheet and strip from France amounted to 4,489 net tons during the third quarter of 1981 which is above the 2,427 net tons during the first quarter of 1981 and 3,019 net tons during the second quarter of 1981.

Imports of stainless steel sheet and strip from the Federal Republic of Germany (FRG) accounted for 3.0 percent of U.S. apparent consumption during the third quarter of 1981. This is above the 0.6 and 1.4 percent levels during the first and second quarters of 1981, and is the highest quarterly level during the 1974 to 1981 period. The 5,734 net tons of stainless steel sheet and strip imported from The FRG during the third quarter of 1981 was also the highest quarterly tonnage for the 1974 to 1981 period, exceeding the levels of 1,173, and 3,198 net tons during the first and second quarters of 1981, respectively.

The Department of Commerce is beginning to examine trade in stainless steel sheet and strip from France and the Federal Republic of Germany to determine whether sales in the U.S. market have involved dumping or subsidization.

Surge conditions do not exist for the category of stainless steel plate. Import penetration during the third quarter of 1981 was 7.5 percent, which is below the 1971 throught 1980 ten-year weighted average of 11.6 percent.

While surge conditions do not currently exist for the category of stainless steel rod, there is concern that import penetration is at a point which warrants particular attention during the coming months. Import penetration during the third quarter of 1981 was 47.0 percent which is above the 1971 through 1980 ten-year weighted average of 44.3 percent, but is slightly lower than the level of 48.6 percent for the same period last year.

Surge conditions exist for the category of stainless steel bar. Import penetration for the third quarter of 1981 was 26.7 percent, which is above the 1971 through 1980 ten-year weighted average of 17.1 percent. This import penetration is higher than any quarterly level since 1974, with the previous peak being 26.4 percent during the fourth quarter of 1975. The import penetration level for the third quarter of 1981 represents a substantial increase over the level of 20.4 percent during the second quarter of 1981 and the level of 16.3 percent during the first quarter of 1981, and is above the third quarter 1980 level of 23.5 percent.

In the quarterly review of second quarter import data, the Department of Commerce announced that imports of stainless steel bar from Spain warranted particular attention during the coming months. During the third quarter of 1981, import penetration of stainless steel bar from Spain reached 5.5 percent, surpassing the levels of 2.2 and 5.2 percent during the first and second quarters of 1981, respectively. In addition, for the period from 1974 to 1981 the third quarter 1981 import penetration level for Spanish bar was exceeded only during the second quarter of 1977, when it reached 5.6 percent, and during the third quarter of 1975, when it reached 7.9 percent. The quantities of imports of stainless steel bar from Spain were 2,080 net tons for the third quarter of 1981, as compared to 873 and 2,042 net tons for the first and second quarters of 1981, respectively. For the period of 1974 to 1981, only the 1977 second quarter tonnage level of 2,300 net tons was greater than the third quarter 1981 level.

The Department of Commerce is commencing a formal examination of trade in stainless steel bar from Spain to determine whether sales in the U.S. market have involved dumping or subsidization.

Surge conditions exist for the category of stainless steel pipe and tube. Import penetration during the third quarter of 1981 was 59.1 percent, which is above the 1971 through 1980 ten-year weighted average of 41.5 percent. The import penetration level during the third quarter of 1981 is above all quarterly import penetration levels since the first quarter of 1978 when the import penetration level reached 62.2 percent. The third quarter 1981 level is above the first and second quarter 1981 levels of 41.9 and 50.4 percent, respectively. It is also above the third quarter 1980 level of 51.6 percent.

Third quarter 1981 statistics indicate that stainless steel pipe and tube from Belgium reached an import penetration level of 3.3 percent, up from zero during the first and second quarters of 1981 and 0.5 percent during the fourth quarter of 1980. Pipe and tube imports from Belgium reached 604 net tons during the third quarter of 1981, as compared to 70 net tons for the fourth quarter of 1980 and zero net tons during the first two quarters of 1981.

The 3.8 percent import penetration level for stainless steel pipe and tube from Italy during the third quarter of 1981 is the highest quarterly level during the period from the first quarter of 1979 through the present. The 697 net tons of stainless steel pipe and tube imported from Italy during the third quarter of 1981 was the peak figure for this period as it exceeded the first and second quarter 1981 levels of 17 and 157 net tons, respectively.

Import penetration of stainless steel pipe and tube from the Federal Republic of Germany (FRG) reached 8.1 percent during the third quarter of 1981, as compared to the levels of 5.7 and 3.2 percent for the first and second quarters of 1981, respectively. Prior to 1980, the FRG's import penetration level had not exceeded 2.1 percent, and only exceeded the third quarter 1981 level of 8.1 percent during the third quarter of 1980, when import penetration reached 8.3 percent. Import tonnage figures also show recent, large increases in imports of stainless steel pipe and tube from the FRG. The third quarter 1981 level of 1,470 net tons is the highest level for the 1974 to 1981 period, with the previous high of 865 net tons occurring during the third quarter of 1980. The import levels for the first and second quarters of 1981 were 688 and 431 net tons, respectively.

The Department of Commerce is beginning to examine trade in stainless steel pipe and tube from Belgium, Italy, and the Federal Republic of Germany to determine whether sales in the U.S. market have involved dumping or subsidization.

Surge conditions exist for the category of alloy tool steel. Import penetration for the third calendar quarter of 1981 was 39.5 percent, which is above the 1971 through 1980 ten-year weighted average of 22.0 percent. The third quarter 1981

import penetration level is above the levels of 28.6 and 32.0 percent during the first and second quarters of 1981, respectively, and above the level of 26.8 percent during the third quarter of 1980.

Import penetration of alloy tool steel from Brazil during the third quarter of 1981 reached 1.6 percent, which is the highest quarterly level during the 1979 through 1981 period. The 399 net tons of alloy tool steel imported from Brazil during the third quarter of 1981 exceeded the third quarter 1980 level of 106 net tons, and the first and second quarter 1981 levels of 185 and 126 net tons, respectively.

In the Department's second review of imports of specialty steel, which reviewed import activity for the first quarter of 1981, a surge in imports of alloy tool steel from the FRG was announced. The Department of Commerce began to examine trade in alloy tool steel from the FRG to determine whether fair or unfair competition was involved. During the third quarter of 1981, imports of alloy tool steel from the FRG accounted for 16.3 percent of U.S. apparent consumption, up from 10.9 percent during the second quarter of 1981 and 6.6 percent for the first quarter of 1981. The quantities of imports of alloy tool steel from the FRG were 4,150 net tons during the third quarter of 1981, which is above all previous quarterly levels during the 1974 through 1981 period.

The Department of Commerce is furthering its examination of trade in alloy tool steel from the Federal Republic of Germany and is beginning to examine trade in alloy tool steel from Brazil to determine whether sales in the U.S. market have involved dumping or subsidization.

TABLE 1—IMPORT MARKET SHARES BY PRODUCT CATEGORY

[Percent of U.S. apparent consumption [1] supplied by imports]

Year	S.S. sheet and strip	S.S. plate	S.S. bar	S.S. rod	Alloy tool steel	S.S. pipe and tubing
1971	19.7	17.9	13.7	57.7	14.4	44.5
1972	10.2	24.0	14.5	50.9	14.7	33.9
1973	6.1	13.3	12.5	42.3	18.0	20.8
1974	7.5	9.3	15.2	46.8	18.4	26.5
1975	13.9	16.8	24.6	68.4	28.0	41.5
1976	10.7	20.0	18.2	51.3	25.6	61.2
1977	9.0	8.4	17.4	41.2	21.8	46.3
1978	9.8	9.6	17.5	39.1	24.5	52.0
1979	7.0	5.0	16.4	31.5	27.3	36.4
1980	5.9	2.7	21.6	37.9	[2] 27.7	46.6
Ten-year weighted average	9.5	11.6	17.1	44.3	22.0	41.5

[1] Apparent consumption = Net domestic shipments plus imports minus exports.
[2] The figure of 27.7 percent which appears here has been revised downward since the publication of the first review due to revisions in U.S. Census Data. This revision does not alter the existence of surges previously announced for this product category.
Sources: Imports: U.S. Department of Commerce, Bureau of the Census, IM146. Exports: U.S. Department of Commerce, Bureau of the Census, EM546. Shipments: American Iron and Steel Institute, AIS10-S and AIS10, data reflect net shipments, excluding shipments to reporting companies.

Specialty Steel Products Lines: TSUSA Categories

(1980 U.S. Tariff Schedules)

(1) Stainless Steel Sheet and Strip

607.7610	608.2900
607.9010	608.4300
607.9020	608.5700
608.2600	

(2) Stainless Steel Plate

607.7605	607.9005

(3) Stainless Steel Bar

606.9005	606.9010

(4) Stainless Steel Rod

607.2600	607.4300

(5) Alloy Tool Steel

606.9300	606.9525
606.9400	606.9535
606.9505	606.9540
606.9510	607.2800
606.9520	607.3405
607.3420	608.3405
607.4600	608.3420
607.5405	608.4905
607.5420	608.4920
607.7205	608.6405
607.7220	608.6420
607.8805	609.4520
607.8820	609.4550

(6) Stainless Steel Pipe and Tubing

610.3705	610.5130
610.3715	610.5235
610.3745	610.5210
610.3765	610.5215

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 37111 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-25-M

Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Computer Systems Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on October 5, 1981 pursuant to the charter of the Committee. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

TIME AND PLACE: January 14, 1982, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Conference Room D, 14th Street and Constitution Ave., NW., Washington, D.C.

Agenda

General Session

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Review of the Foreign Availability Certification Group proposal status.

(4) Discussion of the agenda for 1982.

PUBLIC PARTICIPATION: The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written Statements may be submitted at any time before or after the meeting.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT:
Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-2583.

Dated: December 23, 1981.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 81-37114 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-25-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Computer Systems Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981

in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on October 5, 1981 pursuant to the charter of the Committee.

The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) maintenance of the processor performance tables and further investigation of total systems performance; and (2) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

TIME AND PLACE: January 14, 1982, at 1:30 p.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the meeting will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and properly classified under Executive Order 12065.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-2583.

Dated: December 23, 1981.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 81-37115 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Minnesota Zoological Garden; Modification of Permit

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Public Display Permit No. 200, issued to the Minnesota Zoological Garden, 12101 Johnny Cake Ridge Road, Apple Valley, Minnesota, on August 3, 1977, is hereby modified by deleting Section B-6 and substituting therefor the following:

6. This permit is valid with respect to the taking authorized herein until December 31, 1983.

This modification is effective December 29, 1981.

The Permit as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: December 22, 1981.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 81-36979 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-22-M

Requesting of Nominations to the National Advisory Committee on Oceans and Atmosphere

AGENCIES: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice requesting nominations to the National Advisory Committee on Oceans and Atmosphere.

SUMMARY: The Department of Commerce seeks recommendations for nominations that will be submitted to the President for six members of the National Advisory Committee on Oceans and Atmosphere. The appointees will take office on July 1, 1982. Particular expertise in the fields of ocean engineering; ocean science; ocean energy and mineral resources development; marine fisheries; atmospheric and climate sciences; and coastal zone management, environment and conservation will be important factors in selection. Recommendations for nominations should be submitted to Martin H. Belsky, Assistant Administrator for Policy and Planning, Room 5222, Department of Commerce Building, Washington, D.C. 20230, no later than January 31, 1982.

FOR FURTHER INFORMATION CONTACT: Robert H. Stockman, Office of Policy and Planning, telephone (202) 377-4634.

SUPPLEMENTAL INFORMATION: The National Oceanic and Atmospheric Administration of the Department of Commerce is seeking recommendations for nominees for six vacancies on the National Advisory Committee on Oceans and Atmosphere (NACOA). NACOA was created by Public Law No. 95-63:

(1) To undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; and

(2) To advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration.

NACOA is composed of 18 members appointed by the President, who serve staggered three-year terms. The Act specifies that members of NACOA shall be appointed from among individuals who are eminently qualified by way of knowledge and expertise in the following areas of direct concern to the Committee:

(1) One or more of the disciplines and fields included in marine science and technology, marine industry, marine-related state and local governmental functions, coastal zone management, or other fields directly appropriate for consideration of matters of ocean policy; or

(2) One or more of the disciplines and fields included in atmospheric science, atmospheric-related state and local governmental functions, or other fields directly appropriate for consideration of matters of atmospheric policy.

On the basis of the current membership and emerging national issues with which NACOA will be concerned, the 1982 nominees should augment NACOA's expertise in ocean engineering; ocean science; ocean energy and mineral resources; fisheries;

atmospheric and climate sciences; and coastal zone management, environment, and conservation. Moreover, because of the progress in the negotiations of a Law of the Sea Treaty, expertise on international ocean law and a broad knowledge of ocean use policy will be particularly valuable. Finally, a knowledge of the private sector's role in the development of mineral, energy, and food resources of the oceans will be sought.

Members of NACOA are expected to attend approximately 9 annual meetings of the Advisory Committee in Washington, D.C., or other locations around the country and to devote substantial time and interest to participation in subcommittees and the development of written documents that can serve as the basis for NACOA actions to fulfill its statutory functions. Members serve as paid consultants and are reimbursed for their travel expenses.

Any interested person may suggest him or her self or other individuals for membership. Applications from minorities or recommending minorities to serve on the Committee are particularly encouraged. A complete curriculum vitae of the individual should be included, along with a statement that the person nominated is aware of the nomination, has the time and interest to serve on the Committee, and appears to have no conflict of interest that would preclude a Committee membership. Letters in support of the nomination may also be submitted.

Any information should be submitted to Martin H. Belsky, Assistant Administrator for Policy and Planning, National Oceanic and Atmospheric Administration, Room 5222, Department of Commerce Building, Washington, D.C. 20230. All materials must be submitted no later than January 31, 1982.

Dated: December 18, 1981.

Francis J. Balint,

Director, Office of Information and Management Services.

[FR Doc. 81-36985 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Levels for Certain Cotton and Man-Made Fiber Apparel Products from the People's Republic of China

December 23, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Applying swing in the amount of 33,990 dozen to the level of restraint established for man-made fiber sweaters in Category 645/646, increasing that level from 516,500 dozen 550,440 dozen during the twelve-month period which began on January 1, 1981. The amount of swing is being deducted from the level for women's girls' and infants' cotton knit shirts and blouses in Category 339, reducing that level from 906,015 dozen to 732,288 dozen during the same agreement year.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506) December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), and October 27, 1981 (46 FR 52409)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 17, 1980, as amended, between the Governments of the United States and the People's Republic of China provides, among other things, for percentage increases in certain specific category ceilings during an agreement year (swing). Pursuant to the terms of the bilateral agreeement, and at the request of the Government of the People's Republic of China, the import restraint levels for cotton, wool and man-made fiber textile products in Categories 339 and 645/646 are being adjusted for the designated agreement period.

EFFECTIVE DATE: December 23, 1981.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 4, 1980, there was published in the **Federal Register** (45 FR 80324) a letter dated November 28, 1980 ot the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton and man-made fiber textile products, including Categories 339 and 645/646, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1981. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to amend the levels of restraint previously established for cotton and man-made fiber textile products in Categories 339 and 645/646 to the designated amounts.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 23, 1981.

Committee for The Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: On November 28, 1980, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption or withdrawal from warehouse for consumption, during the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981 of cotton and man-made fiber textile products in certain specified categories, produced or manufactured in the People's Republic of China, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 17, 1980, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on December 23, 1981, the levels of restraint previously established for cotton and man-made fiber textile products in Categories 339 and 645/646 to the following:

Category	Amended Level of Restraint[1]
339 (dozens)	732,288
645/646 (dozens)	550,490

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1980.

The actions taken with respect to the Government of the People's Republic of China and with respect to imports of cotton and man-made fiber textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore,

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 17, 1980, as amended, between the Governments of the United States and the People's Republic of China which provide, in part, that (1) specific levels of restraint may be exceeded by designated percentages in any agreement year; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

these directions to the Commissioner of Customs which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-37040 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

Exchange Proposals to Trade Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the proposed terms and conditions for trading commodity options on domestic boards of trade.

SUMMARY: Eight domestic boards of trade have submitted applications to trade options on commodity futures contracts under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"), 46 FR 54500 (November 3, 1981). The Commission has determined to make the terms and conditions of these proposals available for public inspection. The Commission believes that public comment on these proposals is in the public interest, and is consistent with its Option Regulations (46 FR 54500 (November 3, 1981)), and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before March 1, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the particular application addressed in the comment.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Esquire, Division of Economics and Education, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-3821; or Linda Kurjan, Esquire, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-8955.

SUPPLEMENTARY INFORMATION: Eight domestic boards of trade have applied under the Commission's Pilot Program for Domestic Exchange-Traded Commodity Options, 46 FR 54500 (November 3, 1981), for designation as contract market to trade options on commodity futures contracts. Applications have been submitted by the following boards of trade: to trade options on domestic CD futures contracts; Commodity Exchange, Inc. (Comex) to trade options on 100 ounce gold futures contracts; Kansas City Board of Trade to trade options on 90-day Treasury bill futures contracts; MidAmerica Commodity Exchange to trade options on 33.2 ounce gold futures contracts; New York Coffee, Sugar and Cocoa Exchange to trade options on sugar No. 11 futures contracts, New York Futures Exchange to trade options on 90-day Treasury bill futures contracts; New York Mercantile Exchange to trade options on platinum futures contracts.

A copy of the terms and conditions of each of these proposals to trade options on a commodity futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted in support of these applications to trade options on futures contracts may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8. Certain of these documents, including specifically those of the Chicago Board of Trade, are subject to claims of copyright. Other submissions are subject to requests for confidential treatment pursuant to 17 CFR 145.9.

Any person interested in submitting written data, views or arguments on the terms and conditions of the applications to trade options on futures contracts or with respect to other materials submitted in support of these applications, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by March 1, 1982. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on December 23, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-37049 Filed 12-28-81; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of Meeting: January 19, 1982.

Time: 0830-1700 hours (closed).

Place: The Pentagon, Room 3A486, Washington, D.C.

Proposed agenda: The Army Science Board Ad Hoc Sub-Group conducting a study on Laser Eye Protection will meet to present and receive briefings and hold discussions. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 697-9703 or 695-3039.

Maria P. Galvan,

Acting Administrative Officer.

[FR Doc. 81-37087 Filed 12-28-81; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent of Albuquerque District, Corps of Engineers To Prepare a Draft Environmental Impact Statement (DEIS) on a Proposal To Add a Small Hydroelectric Generating Facility at Cochiti Lake Which Would Consider Three Alternative Lake Storage Levels

AGENCY: Army Corps of Engineers, Albuquerque District, DOD.

ACTION: Intent to prepare a draft environmental impact statement (DEIS).

1. *Proposed Action and Alternative Solutions.* The purpose of the proposed action is to determine the overall feasibility of generating hydroelectric power at Cochiti Lake. In the event of a positive report, the addition of a hydropower facility at Cochiti Lake could be recommended for Congressional authorization. Actual facility development would require that the existing outlet works be modified to

accommodate a hydropower plant. Pool elevations ranging from the existing permanent pool elevation to approximately 100 feet above this elevation will be evaluted.

2. *Public Involvement Process.* Prior to the completion of the draft Feasibility Report, which will include a DEIS, a formal public meeting will be held, at which time all affected or interested federal, state, and local agencies, affected Indian tribes and other interested private organizations and individuals will be invited to participate. Federal, state, and local input in the development of an EIS will be obtained by a combination of agency coordination, workshops, and, if necessary, public meetings. All interested parties will be invited to submit comments on the DEIS when it is circulated for field level review.

This study is being coordinated with the U.S. Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act of 1958 (72 Stat. 563) (Pub. L. 85–624) and the Endangered Species Act of 1973, as amended (87 Stat. 884) (Pub. L. 93–205). Consultation with the Advisory Council on Historic Preservation, the New Mexico State Historic Preservation Officer and the National Park Service will be initiated pursuant to the National Historic Preservation Act of 1966 (80 Stat. 915) as amended (94 Stat. 2987) and the Reservoir Salvage Act of 1960 (74 Stat. 220), as amended (88 Stat. 174 and 94 Stat. 2987).

3. *Significant Issues to be Analyzed.* Significant issues to be analyzed in depth in the development of the DEIS include the impact of each alternative on terrestrial and aquatic biological systems, endangered species, recreational opportunities, water quality, proposed area plans, cultural features, aesthetic qualities and community activities. Also, if necessary, the development of mitigative measures will be undertaken.

4. *Public Review.* The present estimated date that the Feasibility Study and the DEIS will be circulated for public review is September 1982.

5. *Further Information.* Questions regarding the study and DEIS may be directed to:

Mr. James G. Hanifen, Albuquerque District, Corps of Engineers, P.O. Box 1580, Albuquerque, NM 87103, Phone: (505) 766–2836, (FTS) 474–2836 or

Mr. Kim B. Zahm, Albuquerque District, Corps of Engineers, P.O. Box 1580, Albuquerque, NM 87103, Phone: (505) 766–1034, (FTS) 474–1034.

Dated: December 17, 1981.

Julian E. Pylant,

Lieutenant Colonel, Corps of Engineers, Commanding.

[FR Doc. 81–36987 Filed 12–28–81; 8:45 am]

BILLING CODE 3710–KK–M

DEPARTMENT OF EDUCATION

Office of Assistant Secretary for Postsecondary Education

State Student Incentive Grant Program; Closing Date for Receipt of State Applications For Fiscal Year 1982

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Receipt of State Applications for Fiscal Year 1982.

The Secretary gives notice of the closing date for receipt of State applications for Fiscal Year 1982 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides a nationwide delivery system of grants for students with substantial financial need.

A State that desires to receive SSIG funds for any fiscal year must have an agreement with the Secretary as provided for under the authorizing law, and must submit an application through the State agency that administers its program of student grants.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands that have executed the required agreement.

Authority for this program is contained in Title IV, Part A, sections 415A to 415D of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070c–1070–3)

Closing Date for Transmittal of Applications

Applications for Fiscal Year 1982 SSIG funds must be mailed or hand-delivered by January 28, 1982.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Washington, D.C. 20202–3327 and marked for the attention of Ms. Lanora G. Smith, Acting Chief, State Student Incentive Grant Program, Room 3674, ROB #3. The Department of Education requires proof of mailing. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (2) a legibly dated U.S. Postal Service postmark; or (3) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does note accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. State Agencies should not that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, State Agencies should check with their local post offices. The Department of Education encourages State Agencies to use registered or at least first-class mail.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., Room 3674, Regional Office Building #3, Washington, D.C. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, D.C. time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

The Secretary requires an annual submission of an application for receipt of SSIG funds. In preparing an application, each State Agency should be guided by the table of allotments provided in the application package.

Basic State Allotments, to the extent needed by the States, are determined by formula and are not subject to negotiations. The States may also request a share of reallotments, in addition to their basic allotments, contingent upon the availability of such funds from allotments to any States unable to use all their basic allotments. In FY 1981, all 50 States, the District of Columbia, Puerto Rico, and the Virgin and Pacific Islands participated in the SSIG student assistance delivery network.

Application Forms and Information

The required application form for receiving SSIG funds will be mailed to officials of appropriate State Agencies at least 30 days before the closing date. This form contains the basic allotment tables with the amount computed for individual States under the SSIG

Program authorization, as well as instructions for requesting Federal funds. The amounts available to State Agencies are limited by the statutory allotment formula and the level of appropriations for the Program. Applications must be prepared and submitted in accordance with the program regulations cited in this notice and the instructions provided in the application package.

Application Regulations

The following regulations are applicable to the SSIG Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions) (formerly 45 CFR Parts 100b and 100c, respectively).

(2) The State Student Incentive Grant Program Regulations in 34 CFR Part 692 (formerly 45 CFR Part 192) published in the Federal Register on July 14, 1981 (46 FR 36342).

For Further Information

Inquiries can be made of Ms. Lanora G. Smith, Acting Chief, State Student Incentive Grant Program, Office of Student Financial Assistance, U.S. Department of Education, Washington, D.C. 20202–3327; telephone (202) 472–4265.

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

Dated: December 21, 1981.

T. H. Bell,

Secretary of Education.

[FR Doc. 81-37044 Filed 12-28-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-79-006; OFC Case Numbers 61005-9021-01 through 03-11

Consolidated Rail Corp.; Notice of Extension of Temporary Exemptions and Notice of Modification of Order Granting Temporary Public Interest Exemptions

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of extension of temporary exemptions and notice of modification of order granting temporary public interest exemptions—Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: In response to a petition filed with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) on July 21, 1981, by Consolidated Rail Corporation (ConRail), ERA herby gives notice of its determination to grant a one-year extension of the temporary public interest exemptions granted ConRail on July 22, 1980 (45 FR 50381, July 29, 1980). The temporary exemptions, issued under section 211(c) of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), permitted the use of petroleum and natural gas in three new major fuel burning installations (MFBI's) installed at ConRail's Cos Cob, Connecticut, generating facility (Cos Cob MFBI's) until August 1, 1981. (Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in certain new MFBI's unless an exemption for such use has been granted by ERA. Pertinent criteria and procedures for petitioning for such an exemption are contained in 10 CFR Parts 500, 501 and 503 published on June 6, 1980, at 45 FR 38276 and 38302.)

ERA also notice that pursuant to 10 CFR Part 501, Subpart G, it has, on its own initiative, determined that the original order granting ConRail the temporary public interest exemptions should be modified by rescinding certain terms and conditions imposed therein which placed restrictions on the amounts of petroleum and natural gas that can be used in the Cos Cob MFBI's and required annual reports to be made to ERA of the amounts of such fuels actually used.

Accordingly, as detailed in the Decision and Order section below, ERA hereby extends the provisions of the FUA order issued to ConRail for the Cos Cob MFBI's from August 1, 1981, to August 1, 1982, and rescinds the terms and conditions of that order which impose restrictions on the amounts of petroleum and natural gas which may be burned in those MFBI's and required annual reports of actual consumption of such fuels.

EFFECTIVE DATE: In accordance with section 702(a) of FUA, this order shall take effect on February 27, 1982. (At the date of ConRail's filing of its petition for extension, the time interval required for compliance with the procedural requirements of FUA and the implementing rule precluded ERA from reaching a final determination on the extension request before the temporary exemptions expired on August 1, 1981. In recognition of ConRail's obligation to provide uninterrupted commuter and passenger service in the New York-Connecticut corridor, ERA, in conjunction with its acceptance of ConRail's petition for extension, advised ConRail that until such time that a final order granting or denying the requested extensions is effective, ERA will neither take nor recommend enforcement action against ConRail for the continued use of petroleum or natural gas in the Cos Cob MFBI's.)

FOR FURTHER INFORMATION CONTACT:

Richard Ransom, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 6114, Washington, D.C. 20461, Phone (202) 653–3341.

William H. Freeman, Case Manager, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 6114G, Washington, D.C. 20461, Phone (202) 653–3379.

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B–178, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–2967.

The public file containing a copy of all documents and supporting materials on this proceeding is available for inspection at the Office of Fuels Conversion, ERA, Washington, D.C., Monday through Friday, 8:00 a.m.–4:30 p.m. Persons wishing to review the public file should make prior arrangments with the Case Manager named in the Information Contact section above.

SUPPLEMENTARY INFORMATION: The three MFBI's for which the temporary exemptions were granted are oil/gas-fired packaged boilers installed at the Cos Cob facility by ConRail in compliance with a Consent Judgment entered by the U.S. District Court for the District of Connecticut (the Court) in Civil Action No. B76–282 on May 2, 1979. The terms of the Consent Judgment required that the coal-fired operation at the Cos Cob facility be immediately curtailed for violations of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, and that all operations at the facility be permanently terminated upon full conversion of the rail line's signal control and traction systems from 25 to 60-cycle electricity, enabling ConRail to use electricity purchased from a local utility in its operations.

ConRail's petition for extension reported repeated traction power test failures which have resulted in delaying the completion of the conversion project and outlined measures taken by it and the Court to resolve those technical problems and to expedite the completion of the conversion project. ConRail requested that the temporary public interest exemptions granted the

three Cos Cob MFBI's be extended from August 1, 1981, to August 1, 1982.

As required by 10 CFR 501.63, ERA published notice of its acceptance of ConRail's petition for extension in the **Federal Register** on August 24, 1981 (46 FR 42710). The notice provided a 45-day comment period during which interested persons could submit written comments on the petition for extension of the temporary exemptions and request that a public hearing be convened. The period expired on October 8, 1981. No comments were received and no hearing was requested.

The ERA staff reviewed and analyzed the information contained in the record of the proceeding at the date of the close of the comment period provided in the notice of acceptance and prepared a tentative staff analysis which recommended that the requested one-year extension of the temporary public interest exemptions be granted. During the course of its analysis the ERA staff also reviewed other provisions of the FUA order to ConRail for their continued validity and usefulness. As a result, the ERA staff recommended in the tentative staff analysis that the terms and conditions attached to that order which imposed restrictions on the amounts of petroleum and natural gas that may be consumed in the Cos Cob MFBI's, and which required annual reports of such fuel use, be rescinded by ERA because they are no longer necessary.

As required by 10 CFR 501.64, ERA published notice of the availability of the tentative staff analysis in the **Federal Register** on November 23, 1981, at 46 FR 57340. In that notice a summary of the tentative staff analysis was furnished. It was also noticed that pursuant to 10 CFR Part 501, Subpart G, ERA was commencing a proceeding on its own initiative to modify the FUA order to ConRail by making the rescissions recommended by the ERA staff in the tentative staff analysis. ERA also stated in that notice that if it is determined to grant ConRail the requested extension of the temporary public interest exemptions, and provided no persuasive evidence to the contrary was received during the public comment period provided therein, it proposed to make in the same action granting the extensions, the recommended rescissions. The 14-day comment period provided in the notice of availability of the tenative staff analysis expired on December 7, 1981. No comments on the tentative staff analysis or ERA's proposed modification of the FUA order were received, nor was a public hearing requested.

As required by section 701(f) and (g) of the Act, copies of ConRail's petition for extension, the notice of acceptance and the notice of availability of the tentative staff analysis were forwarded to the Environmental Protection Agency and the Federal Trade Commission for comment. No comments were received from those agencies.

Decision and Order

Petition for Extension: Based upon review of the entire record of this proceeding to date, ERA has determined that: (1) notwithstanding ConRail's failure to shit down the Cos Cob MFBI's on the date originally projected, the circumstances which initially qualified the Cos Cob MFBI's to receive the temporary public exemptions continue to exist at this time; (2) in spite of what appears to have been a good faith effort on ConRail's part to comply with the terms of both the Consent Judgment and the FUA order, it has been prevented from doing so by unforeseen circumstances attributable to the complexity of the conversion project; and (3) the extension of the temporary exemptions, as requested, is in the public interest and consistent with the purposes of FUA. Therefore, the provisions of the FUA order issued to ConRail by ERA on July 22, 1980, in Docket No. ERA-FC-79-006, as published in the **Federal Register** on July 29, 1980, at 45 FR 50381, are hereby extended from August 1, 1981, to August 1, 1982. Pursuant to such extension, paragraphs 4.(b) and (c) of the terms and conditions attached to the above cited order are revised as follows: Where appearing, the year 1981 is changed to 1982.

Modification of Exemption Order: ERA has concluded that the increasing costs of petroleum and natural gas are dictating the maximum conservation of those fuels by ConRail and that continued imposition by ERA of restrictions on their use in the Cos Cob MFBI's (and the reports required thereon) are no longer necessary. Accordingly, paragraphs 2. and 3. of the terms and conditions attached to the above cited order are hereby rescinded.

Environmental Analysis: In accordance with section 763(1) of FUA, the granting or denial of a temporary exemption is not deemed to be a major Federal action for the purposes of section 102(2)(C) of the National Environmental Policy "Act of 1969. An environmental analysis was not required in the initial ConRail proceeding and is not required for ERA's decision on the extension request.

Judicial Review: Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review at any time before the 60th day after the date of its publication in the **Federal Register.**

Issued in Washington, D.C. on December 16, 1981.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 81-36850 Filed 12-28-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-81-10; OFC Case Nos. 56358-9016-01, 02-12]

Phillips Petroleum Co.; Extension of Comment Period on Tentative Staff Analysis

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Phillips Petroleum Company, extension of comment period on tentative staff analysis.

On April 9, 1981, Phillips Petroleum Company (Phillips) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting two major fuel burning installations (MFBI) being installed at its Borger, Texas, refinery, from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 et seq. (FUA or the Act), which prohibit the use of petroleum and natural gas as a primary energy source in certain new MFBI's unless an exemption for such use has been granted by DOE.

ERA accepted the petition on May 30, 1981, and published notice of its acceptance, together with a statement of the reasons set forth in the petition for requesting the exemptions, in the **Federal Register** on June 9, 1981 (46 FR 30525). Publication of the notice commenced a 45-day public comment period pursuant to section 701 of FUA which expired July 24, 1981.

On September 18, 1981, ERA published a notice of availability of a tentative staff analysis (46 FR 46379). On October 14, 1981, Phillips requested that ERA extend the 14-day public comment period following publication of the tentative staff analysis; ERA granted Phillips' request. On December 1, Phillips requested that the comment period be extended by an additional 30 days.

ERA hereby gives notice that it has extended the period during which it will accept public comment from December 7, 1981 to January 22, 1982.

FOR FURTHER INFORMATION CONTACT: Ellen Russell, Case Manager, Office of Fuels Programs, Fuels Conversion

Division, Economic Regulatory Administration, 2000 M Street, NW., Room 6114, Washington, D.C. 20461, Phone (202) 653-3379.
Marilyn Ross, Office of General Counsel, Department of Energy, 1000 Independence Avenue, Washington, D.C. 20585, Phone (202) 252-2967.

Issued in Washington, D.C., December 21, 1981.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 81-36940 Filed 12-28-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ID-1989-000]

John W. Barton; Application

December 22, 1981.

The filing individual submits the following:

Take notice that on December 14, 1981, John W. Barton filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director, Gulf States Utilities Company.
Director, Dravo Corporation.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 14, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-36968 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP72-300-012]

Consolidated Gas Supply Corp. and Columbia Gas Transmission Corp.; Petition To Amend

December 23, 1981.

Take notice that on December 4, 1981, Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, and Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charlestown, West Virginia 25325, filed in Docket No. CP72-300-012 a joint petition to amend the order issued October 24, 1972, [1] as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation and exchange of natural gas from an additional point of exchange, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that pursuant to the order issued October 24, 1972, as amended, in the instant docket Petitioners were authorized to exchange natural gas and to construct certain facilities necessary to effect such exchanges. Petitioners propose herein to transport and exchange natural gas from an additional delivery point pursuant to an amendatory agreement dated July 8, 1981. It is stated that Columbia would receive gas for the account of Consolidated at an additional point on Columbia's Line WB in Washington District, Upshur County, West Virginia. Consolidated proposes to deliver or cause to be delivered up to 5,000 Mcf of gas per day at the Upshur County delivery point which gas is local production currently under contract to Consolidated.

It is asserted that the necessary gas-supply facilities would be constructed pursuant to budget-type authority.

It is stated that the additional delivery point would attach newly-developed local supplies of gas to markets in an orderly, efficient and economical manner and would obviate the necessity of constructing expensive and duplicative pipeline facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-36969 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. CP81-205-002]

Delhi Gas Pipeline Corp.; Petition To Amend

December 23, 1981.

Take notice that on November 19, 1981, Delhi Gas Pipeline Corporation (Petitioner), Fidelity Union Tower, Dallas, Texas 75201, filed in Docket No. CP81-205-002 petition to amend the order issued July 24, 1981, in said docket pursuant to § 284.127 of the Commission's regulations so as to authorize the transportation of additional gas reserves of up to 120,000 Mcf per day by March 1981, up to 160,000 Mcf per day by March 1982, and up to 200,000 Mcf per day by March 1983, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that pursuant to the terms of a July 16, 1979, transportation agreement with United Gas Pipe Line Company (United) Petitioner agreed to receive natural gas at various delivery points and to transport and redeliver these volumes to United at several points of redelivery all within the state of Texas. Petitioner asserts that on February 19, 1981, it filed an application pursuant to § 284.127 of the regulations in the instant docket to continue this transportation service for 20 years commencing July 16, 1981. It further states that the total and daily volumes of natural gas to be transported during the 20-year period were estimated to be 160,600 Mcf and 22,000, respectively.

Petitioner asserts that it along with Texas Oil and Gas Corporation (TXO), entered into agreements whereby TXO would tender quantities of natural gas from new wells to be developed or controlled by TXO to United for long term dedication for sale in interstate commerce. Petitioner further states that pursuant to the terms of this agreement it is obligated to transport the gas tendered by TXO to United. Under the terms of the agreement, TXO would tender or cause to be tendered to United minimum daily quantities of 120,000 Mcf as of March 1981, 160,000 Mcf as of March 1982, and 200,000 Mcf as of March 1983.

Petitioner requests that its authorization in the instant docket be amended to provide for the

transportation of up to 120,000 Mcf per day as of March 1981, 160,000 Mcf per day as of March 1982, and 200,000 Mcf per day as of March 1983. Further, Petitioner now estimates that given the terms of the tender agreement the total columes to be transported over a 20-year period would be 2,132,000 Mcf.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 13, 1982, file with the Federal Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). 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 petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-36090 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-96-000]

Eastern Shore Natural Gas Co.; Application

December 23, 1981.

Take notice that on November 25, 1981, Eastern Shore Natural Gas Company (Applicant), P.O. Box 615, Dover, Delaware 19901, filed in Docket No. CP82-96-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public covenience and necessity authorizing the transportation and delivery of natural gas to Stauffer Chemical Company (Stauffer) and the rendition of additional interruptible and firm service to several existing customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is currently authorized to transport and sell natural gas to Stauffer's carbon disulfide and polyvinyl plants located at Delaware City, Delaware. It is explained that Stauffer has sold the polyvinyl plant to Formosa Plastics Corporation (Formosa). Applicant is currently authorized to deliver up to 6,950 Mcf of firm gas per day to Stauffer. Under new contracts with Stauffer and Formosa, Applicant proposes to sell and deliver up to 3,600 dekatherms (dt) equivalent per day to Stauffer and up to 1,250 dt equivalent per day to Formosa. Applicant states that it has offered the balance to its existing customers.

It is stated that the contract between Applicant and Stauffer requires that the gas sold and delivered to Stauffer for feedstock and process uses be metered separately from gas sold for use as boiler fuel and similarly the contract between Applicant and Formosa requires that gas sold for direct fire production equipment be separately metered from gas sold for boiler fuel use. Hence, Applicant proposes the construction and operation of new metering facilities.

Applicant further proposes the reallocation of 45 dt equivalent of firm gas previously allocated to two other direct sale customers, Killen Grain Company (Killen Grain) and Atlantic Automotive Products, Inc. (Atlantic). It is explained that Killen Grain no longer has need for firm demand gas and Atlantic has recently ceased operations in Frederalsburg, Maryland.

The following existing customers of Applicant have accepted the offer of additional volumes of firm gas.

Proposed additional daily quantities of firm gas—dt equivalent

Customer:	
Elkton Gas Service	200
Delaware Gas Division	1,090
Citizens Gas Division	535
Cambridge Gas Company	50
City of Easton	265
Shoreman Food Technologies, Inc.	5

Applicant further requests authority to provide interruptible service to several of its direct sale customers in order to be able to provide such service when interruptible gas becomes available on short notice. Applicant proposes the following increases in interruptible service:

Proposed additional daily quantities of firm gas—dt equivalent

Customer:	
City of Dover	6,250
Delmarva Power & Light Co	5,000
Formosa	3,000
Getty Refining & Marketing Co.	13,000
International Playtex	1,500
Reichhold Chemicals, Inc.	1,290

It is explained that additional interruptible service to such customers would be supplied from increases in Applicant's gas supply including increases in deliveries from Transcontinental Gas Pipe Line Corporation's system supply, additional possible sources of longer-term gas supply and short term gas purchases.

The total cost of the proposed meter facilities is estimated to be $52,921.41. Applicant states it would finance such cost from funds generated through operations.

Any person desiring to be heard or to make any protest with reference to said application should on or before ——, —, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) 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 petition 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 petition 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 petition 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. 81-36091 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-312-003]

El Paso Natural Gas Co; Amendment

December 23, 1981.

Take notice that on December 10, 1981, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP81-312-003 an amendment to its application filed in Docket No. CP81-312-000 pursuant to Section 7(c) of the Natural

Gas Act so as to reflect utilization of the Clay Basin Interim Storage Arrangements for the pay-back of natural gas anticipated to be made available for the protection of service to the peak day Priority 1 and 2 requirements of Applicant's east-of-California (EOC) Category B and C customers during the 1981–1982 winter season, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that Applicant in its application filed in Docket No. CP81–312–000 requested, *inter alia*, the extension of the Clay Basin Arrangements through October 31, 1982, in order to permit the continued preservation of natural gas presently owned by Clay Basin Storage Company in the Clay Basin Storage Field for use by Applicant in the protection of service to the Priority 1 and 2 requirements of its EOC customers during the 1981–1982 winter season.

In order to use withdrawal volumes from the Clay Basin Storage Field for pay-back, Applicant proposes herein to reduce its otherwise scheduled sales of natural gas to its three largest Category B distributory customers during off-peak periods during the 1981–1982 winter season. Under the amended arrangements the natural gas diverted from these distributor customers would be delivered instead to Applicant's California customers, Southern California Gas Company and Pacific Gas and Electric Company, and/or to Houston Pipe Line Company as payback gas. It is stated that the three Category B distributor customers would receive the same volume of natural gas in the same manner as under the presently authorized Clay Basin Arrangements through reductions in the amount of natural gas delivered and sold by Applicant and the contemporaneous delivery by Applicant and sale by Clay Basin Storage Company to those same customers of equivalent volumes of Clay Basin Storage Company's gas.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before January 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's rules. All persons who have heretofore filed need not file again.

Kennth F. Plumb,

Secretary.

[FR Doc. 81-36992 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82–15–000]

Grand Bay Co.; Proposed Changes in FERC Gas Tariff

December 21, 1981.

Take notice that Grand Bay Company, on December 2, 1981, tendered for filing proposed changes in its FERC Gas Tariff for compression service rendered. The proposed changes would increase revenues from jurisdictional service by $52,142 based on the 12-month period ending December 31, 1982.

Grand Bay states that this filing reflects a rate decrease in accordance with Article III of the contract between Grand Bay Company and its jurisdictional customers rendered for filing as the Grand Bay Company rate schedule on November 15, 1977.

Grand Bay requests that the Commission waive the regulation requiring 30-day notice, and requests an effective date of January 1, 1982 for the rate change.

Grand Bay further requests a waiver of any of the Commission's rules and regulations as may be required.

Copies of the filing were served on the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before January 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-36993 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID–1788–001]

John G. Haehl, Jr.; Application

December 22, 1981.

The filing individual submits the following:

Take notice that on December 15, 1981, John G. Haehl, Jr. filed an application on pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board, Niagara Mohawk Power Corporation,
Chief Executive Officer, Niagara Mohawk Power Corporation,
Director, Niagara Mohawk Power Corporation,
Director, Key Bank of Central New York (formerly First Trust and Deposit Company),
Director, Canadian Niagara Power Company, Limited,
President, Utilities Mutual Insurance Company,
Director, Utilities Mutual Insurance Company,
Managing Director, Niagara Mohawk Finance N.V., and
Director, HYDRA–CC Enterprises, Inc.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-36994 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID–1786–000]

John M. Haynes; Application

December 22, 1981.

The filing individual submits the following:

Take notice that on December 15, 1981, John M. Haynes filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Niagara Mohawk Power Corporation,

Director, Canadian Niagara Power Company, Limited,
Treasurer, Canadian Niagara Power Company, Limited,
Director, NM Uranium, Inc.,
Treasurer, NM Uranium, Inc.,
Director, Caragh Investments, Limited,
Vice President, Caragh Investments, Limited,
Treasurer, Caragh Investments, Limited, and
Managing Director, Niagara Mohawk Finance N.V.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-36995 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC82-6-000]

Louisiana-Nevada Transit Co.; Tariff Filing

December 21, 1981.

Take notice that on November 20, 1981, Louisiana-Nevada Transit Company (LNT), P.O. Box 48789, Denver, Colorado 80201, filed pursuant to Section 4 of the Natural Gas Act in Docket No. TC 82-6-000 the following tariff sheets to effect changes in its FERC Gas Tariff, Original Volume No. 1:

Sixth Revised Sheet No. 3A, Superseding Fifth Revised Sheet No. 3A and Original Sheet No. 3B
First Revised Sheet No. 12C, Superseding Original Sheet No. 12C
First Revised Sheet No. 12D, Superseding Original Sheet No. 12D

The foregoing tariff sheets are said to establish a curtailment plan for LNT like that approved for LNT by the Presiding Administrative Law Judge in his initial decision of June 13, 1973, in Docket No. RP72-13 except that such tariff sheets reflect (1) the substitution of Arkansas Louisiana Gas Company (Arkla) for the City of DeQueen, Arkansas, as LNT's only firm resale customer and the annual volumetric limitation approved by the Commission for this sale in its order of September 30, 1981, in Docket Nos. G-1440-001 and CP81-352-000, (2) the updating of LNT's current firm direct industrial customers, and (3) the elimination of the emergency interim policy concerning addition of loads on the LNT system.

LNT states that the Administrative Law Judge's decision in Docket No. RP72-13 has been pending before the Commission on exceptions principally involving disagreement as to the maximum daily entitlement of LNT's only firm resale customer, the City of DeQueen, Arkansas. LNT further states that on September 30, 1981, in Louisiana Nevada Transit Company, Docket No. G-1440-001 and Arkansas Louisiana Gas Company, Docket No. CP81-352-000, the Commission authorized LNT to sell natural gas to Arkla as the successor-in-interest to the City of DeQueen for resale in DeQueen and in the distribution area previously served by LNT's gas. As a result of the Commission's September 30, 1981 order, LNT states it is anticipated that beginning on or about January 10, 1982, after the acquisition by Arkla of distribution facilities from DeQueen and other Arkansas communities, Arkla, rather than the City of DeQueen, will be LNT's sole firm resale customer. Accordingly, LNT states that the foregoing tariff sheets would become effective on January 10, 1982.

Any person desiring to be heard or to make any protest with respect to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before December 31, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-36996 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST81-70-001]

Louisiana Resources Co.; Application for Approval of Rates

December 23, 1981.

Take notice that on November 19, 1981, Louisiana Resources Company (LRC), P.O. Box 3102, Tulsa, Oklahoma 74102, filed in Docket No. ST81-70-001 an amended application pursuant to § 284.123(b)(2) of the Commission's regulations for approval of rates charged for the transportation and exchange of natural gas with United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that on September 24, 1980, LRC and United entered into an agreement whereby LRC and United each agreed to transport by exchange on behalf of the other approximately 5,000 Mcf of gas per day. Each party assessed the other a rate of zero cents per million Btu for the gas transported by exchange which rate was approved by the Commission on April 13, 1981. Subsequently LRC and United have entered into an amendment dated September 18, 1981, which provides that LRC and United each are now obligated to transport on behalf of the other up to 15,000 Mcf of gas per day.

LRC states that it would continue to receive gas for the account of United at a point in Cameron Parish, Louisiana, where United purchases gas from various producers and United would continue to receive gas for the account of LRC at points along its system in Vermillion and Terrebonne Parishes, Louisiana, where LRC purchases gas produced by various suppliers. Due to the greater than expected supplies obtained by United from its producer-suppliers, the parties no longer contemplate that the quantities delivered by each at the delivery points would remain approximately equal. It is stated that each shall be required from time to time to transport to the other balance volumes of gas at certain balance points specified in the agreement. LRC states that the parties, therefore, have expanded the redelivery points to include with respect to additional deliveries due United an additional balance point in Cameron Parish, Louisiana, and a balance point in St. Mary Parish, Louisiana, and with respect to additional redeliveries due LRC such additional balance points as United and LRC may agree at that time. Further, the parties have provided that each would assess the other a transportation fee other than zero cent per million Btu whenever the quantities required to be transported to a balance point by one for the other exceeds (but only to the extent it so exceeds) a combined wellhead and balance point volume of 5,000 Mcf per day. The transportation fee, it is stated, for all other services remains at zero cent per million Btu.

United, it is asserted, would pay LRC 22.25 cents per million Btu for the

volume of balance gas which when added to the quantity of gas redelivered by LRC at the wellhead exceeds 5,000 Mcf per day. LRC submits that this rate is both fair and equitable.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). 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 petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-36997 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1849-001]

James J. Miller; Application

December 22, 1981.

The filing individual submits the following:

Take notice that on December 15, 1981, James J. Miller filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Niagara Mohawk Power Corporation,
President, St. Lawrence Power Company,
Director, St. Lawrence Power Company,
President, Beebee Island Corporation,
Director, Beebee Island Corporation,
President, NM Uranium, Inc.,
Director, NM Uranium, Inc.,
Director, HYDRA-CO Enterprises, Inc., and
Director, Regional Advisory Board, Lincoln First Bank, N.A.

Any person desiring to be heard or to protest said application should file a petition to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-36998 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP81-126-001, etc.]

National Fuel Gas Supply Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

December 22, 1981.

Take notice that the pipelines listed in the Appendix below 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 below.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 6, 1982. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket number	Type filing
Dec. 14, 1981	National Fuel Gas Supply Corp	RP81-126-001	LFUT Report
Do	National Fuel Gas Supply Corp	RP81-126-002	Do.
Do	North Penn Gas Co	RP82-20-000	Do.
Do	Sea Robin Pipeline Co	RP81-116-001	Do.
Do	South Georgia Natural Gas Co	RP82-21-0008	Do.
Do	United Gas Pipeline Co	RP81-115-001	Do.
Dec. 15, 1981	Algonquin Gas Transmission Co	RP82-19-000	Do.
Do	Granite State Gas Transmission, Inc	RP82-18-0004	Do.
Do	Mississippi River Transmission Corp	RP81-129-001	Do.
Do	Mississippi River Transmission Corp	RP81-129-002	Do.
Do	Natural Gas Pipe Line Co. of America	RP81-120-001	Do.
Do	Tennessee Gas Pipeline Co	RP81-99-001	Do.

[FR Doc. 81-36999 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-105-000]

Northern Natural Gas Co., Division of InterNorth, Inc. and Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

December 23, 1981.

Take notice that on December 7, 1981, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP82-105-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants proposed pursuant to a gas exchange agreement dated December 3, 1981, to exchange up to 15,000 Mcf of natural gas per day. It is stated that the agreement was entered into as the result of Applicants' contracting to purchase certain volumes of natural gas from sources remote from their respective systems. Northern, it is stated, is presently purchasing 47.3 percent of the natural gas attributable to Eugene Island Area Blocks 384 and 385, offshore Louisiana, and Tennessee has contracted to purchase up to 15,000 Mcf of gas per day from Northern States Power Company of Minnesota and Northern States Power Company of Wisconsin.

It is stated that Tennessee would cause gas to be delivered to Northern at

the existing interconnections between the pipeline systems of Northern and Midwestern Gas Transmission Company located at North Branch and Cambridge, Minnesota, and Northern would cause to be delivered equal volumes of natural gas from Eugene Island Blocks 384 and 385 or other mutually agreeable sources to Tennessee at the existing interconnection between Tennessee and Trunkline Gas Company at Kinder, Jefferson Davis Parish, Louisiana.

It is asserted that since the proposed exchange is of mutual benefit to both parties no monetary consideration would be given by either party for the proposed exchange service. Any imbalance resulting from the exchange proposed herein would be eliminated within 30 days by the respective party delivering or causing to be delivered equivalent quantities of gas at the interconnection of Tennessee's facilities with those of Houston Pipe Line Company in Newton County, Texas, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) 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 petition 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 petition to intevene 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 petition for leave to intevene 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 Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-37000 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP81-44-003, etc.]

Tennessee Gas Pipeline Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

December 22, 1981.

Take notice that the pipelines listed in the Appendix below 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 below.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 6, 1982. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket number	Type filing
Sept. 14, 1981	Tennessee Gas Pipe Line Co	RP81-44-003	Report.
Nov. 4, 1981	Arkansas Louisiana Gas Co	RP81-101-004	LFUT Report.
Dec. 4, 1981	Midwestern Gas Transmission Co	CP66-110	Report.
Dec. 7, 1981	Consolidated Gas Supply Corp	RP78-52-010	Do.
Do	Southern Natural Gas Co.	RP60-102-008	Plan.
Dec. 8, 1981	Columbia Gas Transmission Corp	RP75-106-003	Report.
Do	National Fuel Gas Supply Corp	RP80-135-013	Do.
Do	National Fuel Gas Supply Corp	RP80-135-014	Do.
Dec. 11, 1981	Panhandle Eastern Pipe Line Co	RP81-119-001	LFUT Report.
Do	Tennessee Gas Pipeline Co	RP81-23	Report.
Do	Trunkline Gas Co	RP81-118-001	LFUT Report.

[FR Doc. 81-37001 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-91-000]

Texas Gas Transmission Corp., Michigan Wisconsin Pipe Line Co., and El Paso Natural Gas Co.; Application

December 23, 1981.

Take notice that on November 20, 1981, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, Michigan Wisconsin Pipe Line Company (Mich Wis), One Woodward Avenue, Detroit, Michigan 48226, and El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP82-91-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of compression facilities on the Block A-334 Platform "A", High Island Area, East Addition, offshore Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicants are presently purchasing reserves underlying Block A-334, offshore Texas, from Union Oil Company of California (Union Oil), Texas Gas Exploration Corporation, Amoco Production Company, Northwestern Mutual Life Insurance Company and Mobil Oil Corporation. Union Oil, the operator of the Block A-334 Platform "A", has indicated that compression is necessary in order to maintain deliverability from the related reserves due to the declining wellhead pressures of certain wells located in the field.

Applicants, therefore, propose the construction and operation of one 922 horsepower compressor unit and appurtenances on Union Oil's Platform

"A". Ownership of the compression facilities would be as follows:

Texas Gas, 44.43 percent.
Mich Wis, 22.23 percent.
El Paso, 33.34 percent.

Such facilities, it is asserted, would be operated by Union Oil. Applicants estimate the cost of the proposed facilities to be $726,000 which would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) 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 petition 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 petition 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 petition 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 Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-37002 Filed 12-28-81; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP76-3]

Inland Gas Company, Inc.; Motion for Extension of Interim Curtailment Procedures

December 16, 1981.

Take notice that on December 1, 1981, The Inland Gas Company, Inc. (Movant), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. RP76-3 [1] a motion pursuant to § 1.12 of the Commission's Rules of Practice and Procedure to extend for a 12-month interim period commencing January 1, 1982, the curtailment procedures set forth in Inland's FERC Gas Tariff, First Revised Volume No. 1, all as more fully set forth in the motion which is on file with the Commission and open to public inspection.

Movant states that by order issued February 9, 1976, it was authorized to implement for the 12-month period commencing January 1, 1976, its curtailment plan as set forth in its tariff filing of July 31, 1975. Movant further states that its curtailment plan was extended without modification through December 31, 1978, and with minor modifications through December 31, 1979.

Movant states that on September 12, 1979, it filed an application for an adjustment of its obligations under Commission Order No. 29 issued May 22, 1979, in Docket No. RM79-15 wherein it requested that it be permitted to revise its curtailment plan to provide for the protection of high-priority and essential agricultural users in a manner different from that contemplated by Order No. 29. Movant asserts that said application was granted by order issued October 31, 1979, in Docket No. SA79-28 pursuant to which it filed revised tariff sheets bearing an issue date of November 27, 1979, and an effective date of November 1, 1979. Movant asserts that by order issued January 14, 1980, the Commission extended its currently effective curtailment plan for an additional 12-month period commencing January 1, 1980. By motion dated November 26, 1980, Movant sought, and by order issued January 21, 1981, was granted an extension of its currently effective curtailment plan through December 31, 1981.

Movant states that its currently effective curtailment plan is an end-use type plan that allocates gas supply deficiencies on a proportional basis among eight large industrial customers having maximum daily contract quantities in excess of 300 Mcf per day and which do not qualify as essential agricultural users under Part 281 of the Commission's Regulations. Movant states that the plan is an end-use plan to the extent that residential, small industrial, and essential agricultural users are not subject to curtailment. Movant states that the method by which it periodically determines the volumetric level of curtailment applicable to each affected customer and the procedures for making special adjustments under emergency conditions are set forth in its FERC Gas Tariff, First Revised Volume No. 1.

Movant states that its supplier, Tennessee Gas Pipeline Company (Tennessee), a Division of Tenneco Inc., by letter dated October 22, 1981, has advised that it anticipates making full deliveries to Movant during the period November 1, 1982, through October 31, 1982, with full deliveries also anticipated in November and December 1982.

Movant asserts that all eight of its affected customers have authorized it to state on their behalf that they support the proposed extension of the currently effective curtailment plan subject to the understanding that they will not be prejudiced by anything provided herein as to any objection that otherwise might be offered to any curtailment filing hereafter made by Movant and, further, that they will not, as a result of their support of this motion, be deemed to have approved, accepted or agreed to any particular method or principal underlying Movant's currently effective curtailment plan; and their support is further subject to each affected customer's reservation of the right to challenge the position of others and to modify its own position in the event of a formal hearing in this proceeding or any other ⅛ proceedings, as may be appropriate.

Any person desiring to be heard or to make any protest with reference to said motion should on or before December 28, 1981, file with the Federal Energy Regulatory Commission, Washington,

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). 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 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.

[FR Doc. 81-36984 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: December 22, 1981.

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
ALABAMA OIL & GAS BOARD									
-ENHANCED ENERGY RESOURCES						RECEIVED: 11/24/81 JA: AL			
8207868	10-9-8113PD	0112520048		107	TF	U S PIPE & FOUNDRY 11-2 #2	BROOKWOOD COAL DEGASIFIC	4.6	SOUTHERN NATURAL
8207869	10-9-8114-PD	0112520049		107	TF	U S PIPE & FOUNDRY 11-6 #3	BROOKWOOD COAL DEGASIFIC	99.4	SOUTHERN NATURAL
8207871	10-9-8116PD	0112520551		107	TF	U S PIPE & FOUNDRY 11-7 #4	BROOKWOOD COAL DEGASIFIC	26.3	SOUTHERN NATURAL
8207870	10-9-8115PD	0112520050		107	TF	U S PIPE & FOUNDRY 11-9 #5	BROOKWOOD COAL DEGASIFIC	8.4	SOUTHERN NATURAL
-ENSERCH EXPLORATION INC						RECEIVED: 11/24/81 JA: AL			
8207867	10-9-8111PD	0105720220		102	4	SANDERS-FOWLER 25-9	NORTH FAYETTE	152.0	CORONADO TRANSMIS
-GRACE PETROLEUM CORPORATION						RECEIVED: 11/24/81 JA: AL			
8207859	81-103PD	0107520362		102	4	JOHNSON USA UNIT 34-15	NORTH BLOWHORN CREEK	0.0	
8207872	1-16-814-PDA	0105720219		102	4	PERRY 12-14	STUDHORSE CREEK	180.0	CORONADO TRANSMIS
8207873	8-21-812-PD	0107520351		102	4	SIZEMORE 3-2	NORTH BLOWHORN CREEK	0.0	SOUTHERN NATURAL
-TERRA RESOURCES INC						RECEIVED: 11/24/81 JA: AL			
8207864	11-13-817PD	0105720184		102	4	BAGWELL #27-1	MUSGROVE CREEK	170.0	WARRIOR DRILLING
8207862	11-13-815PD	0105720233		102	4	BERRY #24-13	MUSGROVE CREEK	100.0	WARRIOR DRLG & EN
8207860	11-13-813PD	0105720245		103		BRANYON #30-9	WEST FAYETTE	90.0	WARRIOR DRILLING
8207866	11-13-819-PD	0105720230		103		CARGILE #32-1	WEST FAYETTE	150.0	WARRIOR DRILLING
8207861	11-13-814PD	0105720161		103		HILDRETH #30-1	WEST FAYETTE	41.0	WARRIOR DRILLING
8207863	11-13-816PD	0105720159		102	4	STEINER-SCHWAB #26-5	MUSGROVE CREEK	480.0	WARRIOR DRILLING
8207865	11-13-818PD	0105720198		102	4	WRIGHT #34-1	MUSGROVE CREEK	150.0	WARRIOR DRLG & EN
MONTANA BOARD OF OIL & GAS CONSERVATION									
-J BURNS BROWN						RECEIVED: 11/25/81 JA: MT			
*8207948	2-81-12	2501521469		108		ROCKY BOY 11-29-14	WILDCAT	21.3	NORTHERN NATURAL
-LADD PETROLEUM CORPORATION						RECEIVED: 11/25/81 JA: MT			
8207945	2-81-13	2508321372		103		DUNCAN-ANDERSON #19-33	SIDNEY	6.0	
-SOUTHLAND ROYALTY CO						RECEIVED: 11/25/81 JA: MT			
8207946	2-21-15	2508521182		103		CRUSCH #2-3	N BAINVILLE (WILDCAT)	5.0	PHILLIPS PETROLEU
8207947	2-81-26	2508521181		103		RUDOLPH #1-31	N BAINVILLE (WILDCAT)	30.0	PHILLIPS PETROLEU
-SUN OIL COMPANY (DELAWARE)						RECEIVED: 11/27/81 JA: MT			
8207944	2-81-14	2509121327		102	2	B BENSON #5	MEDICINE LAKE	27.7	TRUE OIL CO
OKLAHOMA CORPORATION COMMISSION									
-ARCO OIL AND GAS COMPANY						RECEIVED: 11/19/81 JA: OK			
8207819	14686	3504321044		102	4	A K COX #3	PUTNAM	73.0	MOBIL OIL CORP
8207821	14654	3511921620		102	4	MINOR DEAN #1	N W STILL WATER AIRPORT	36.5	
8207818	14687	3504321267		102	4	PEARL KUNC UNIT A #1	PUTNAM	182.5	MOBIL OIL CORP
-ATLAS OIL & GAS CO						RECEIVED: 11/24/81 JA: OK			
8207857	11471	3510820882		103		LEWIS 1-14	UNKNOWN	87.6	WELLHEAD ENTERPRI
-ATLAS OIL INC						RECEIVED: 11/24/81 JA: OK			

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JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8207840	14694	3508321778		102-4		EDWARDS 1-4	WEST GUTHRIE FIELD	50.0	EASON OIL CO
-BEREXCO INC				RECEIVED: 11/20/81 JA: OK					
8207836	14591	3500722121		102-4		KAUP #1-23	DOMBY	0.0	KANSAS NEBRASKA N
				RECEIVED: 11/19/81 JA: OK				0.0	ARCO OIL & GAS CO
-BIG HOPE OIL & GAS INC							ROBINSON #2	0.0	ARCO OIL & GAS CO
8207815	11285	3510300000		103		ROBINSON #1			
8207814	11286	3510320869		103		ROBINSON #2	SOONER TREND	3.0	PANHANDLE EASTERN
				RECEIVED: 11/24/81 JA: OK					
-BROWN & BORELLI INC							S RICHLAND CENTER AREA	380.0	NORTHERN NATURAL
8207851	11484	3507300000		108		TAGGART #1			
				RECEIVED: 11/20/81 JA: OK			SOONER TREND	82.0	CITIES SERVICE GA
-CITIES SERVICE COMPANY									
8207831	11434	3513921424		103		INTERSTATE A #15 (KEYES)	SOONER TREND	108.0	ARKANSAS LOUISIAN
				RECEIVED: 11/19/81 JA: OK					
-CLARK RESOURCES INC							SOONER TREND	0.0	CITIES SERVICE GA
8207806	14119	3507323273		103		MERCER 26-3			
				RECEIVED: 11/24/81 JA: OK			LOWER SKINNER MISSISSIPP	0.0	CONOCO INC
-CLARK RESOURCES INC							NORTHEAST OF PIEDMONT	6.0	CONOCO INC
8207856	12899	3504722710		103		VOTH 26-1			
				RECEIVED: 11/20/81 JA: OK			PIERCE	10.0	PHILLIPS PETROLEU
-CUMMINGS OIL CO									
8207827	11353	3507322772		103		WENDT #1-15	PIERCE	9.6	PHILLIPS PETROLEU
				RECEIVED: 11/24/81 JA: OK			SOUTH ASHLAND	12.0	OKLAHOMA GAS & EL
-DLB ENERGY CORP									
8207852	11489	3501721938		103		DALLAL #1	WEST CANADIAN	8.0	PUBLIC SERVICE CO
8207858	11490	3501721917		103		MOSIER #2			
				RECEIVED: 11/19/81 JA: OK			NW HARMON	547.0	PRODUCER'S GAS CO
-EDWIN L COX									
8207803	11[illegible]	3509120063		108		KING #1	NE TECUMSEH	182.5	TRANSOK PIPELINE
				RECEIVED: 11/20/81 JA: OK			NE TECUMSEH	182.5	TRANSOK PIPELINE
-EDWIN L COX									
8207834	11059	3509120102		108		LACOUR #1	N W CARNEY	18.3	SUN GAS CO
8207835	11061	3512120445		108		MABRAY #2			
				RECEIVED: 11/24/81 JA: OK			SOONER TREND	31.4	DALCO PETROLEUM U
-EDWIN L COX							N RINGWOOD	40.2	CHAMPLIN PETROLEU
8207846	11069	3512120616		108		FULTON #1			
				RECEIVED: 11/24/81 JA: OK			S TONKAWA	0.0	ARCO OIL & GAS CO
-ENERGY SERVICES INC									
8207855	13857	3504520876		102-4		HANAN #26-1	SHO-VEL-TUM	2.4	LONE STAR GAS CO
				RECEIVED: 11/19/81 JA: OK					
-ESTORIL PRODUCING CORP							FISH CREEK FIELD	15.5	ARKANSAS LOUISIAN
8207807	14491	3512521130		102-2		HENSON #1			
8207807	14491	3512521130		103		HENSON #1		92.0	
				RECEIVED: 11/20/81 JA: OK					
-F C D LTD							CESTOS	100.0	MICHIGAN-WISCONSI
8207830	11369	3508121326		103		GLADYS #1-26	CESTOS	350.0	MICHIGAN-WISCONSI
				RECEIVED: 11/20/81 JA: OK					
-F C D OIL CORP							SPRING VALLEY	10.2	GRACE PETROLEUM C
8207828	11364	3507322722		103		GRELLNER 2-21	SPRING VALLEY	7.6	GRACE PETROLEUM C
8207829	11368	3508320846		103		VOOHREES 2-15	SPRING VALLEY	8.0	GRACE PETROLEUM C
				RECEIVED: 11/24/81 JA: OK			SPRING VALLEY	10.1	GRACE PETROLEUM C
-FAIN-PORTER PRODUCTION CO INC							SPRING VALLEY	1.0	GRACE PETROLEUM C
8207843	14790	3510721037		102-4		BELLMON #2-29			
				RECEIVED: 11/24/81 JA: OK					
-GETTY OIL COMPANY									
8207845	10854	3501900000		108		C D SMITH NO 5			
				RECEIVED: 11/24/81 JA: OK					
-GREAT BASINS PETROLEUM CO									
8207849	11142	3512120333		108		SILVA #4			
				RECEIVED: 11/24/81 JA: OK					
-HILL RESOURCES INC									
8207853	11518	3508312124		103		TALLEY #1			
				RECEIVED: 11/24/81 JA: OK					
-HPC INC									
8207841	14708	3504321186		102-4		BARTENBACH #1			
8207842	14709	3504321098		102-4		KROWS #1			
				RECEIVED: 11/19/81 JA: OK					
-KAISER-FRANCIS OIL COMPANY									
8207798	11548	3504720957		108		BENTZ #1-16			
8207795	11556	3504700000		108		BOLENBAUGH #1			
8207796	11555	3504720933		108		CAMPBELL #1-5			
8207793	11564	3504700000		108		FISCHABER #4			
8207822	11566	3504720913		108		HEITFELD #1-30			

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8207817	11567	3504720923		108		HOLROYD #1-36	SPRING VALLEY	8.2	GRACE PETROLEUM C
8207823	11565	3504700000		108		JANTZEN #1-18	SPRING VALLEY	2.7	GRACE PETROLEUM C
8207794	11563	3504720910		108		KEILBARTH #1-30	SPRING VALLEY	9.3	GRACE PETROLEUM C
8207797	11554	3504700000		108		O'NEILL #2	SPRING VALLEY	10.3	GRACE PETROLEUM C
-MAPCO PRODUCTION COMPANY				RECEIVED: 11/20/81 JA: OK					
8207837	14735	3501922264		102-4		WOODRUFF #1-18	WEST HEWITT	1.5	AMINOIL USA INC
8207837	14735	3501922264		103		WOODRUFF #1-18	WEST HEWITT	1.5	AMINOIL USA INC
-MAY PETROLEUM INC				RECEIVED: 11/19/81 JA: OK					
8207804	11474	3504520742		103		CADWELL #1 (045-57479)	S E ARNETT AREA	18.3	NORTHERN NATURAL
-MORAN EXPLORATION INC				RECEIVED: 11/19/81 JA: OK					
8207802	10606	3501721775		103		JEALINEK 28 #1	YUKON AREA	0.0	DELHI GAS PIPELIN
8207805	11475	3501721729		103		RED RIVER CATTLE CO #1	YUKON AREA	0.0	DELHI GAS PIPELIN
-MORAN EXPLORATION INC				RECEIVED: 11/20/81 JA: OK					
8207824	11476	3501721771		103		LINN-CO 28 #1	YUKON AREA	0.0	DELHI GAS PIPELIN
8207825	11477	3501721656		103		SASSEEN #2	YUKON AREA	0.0	PHILLIPS PETROLEU
8207826	11478	3517218380		103		WRIGHT 28 #1	YUKON AREA	0.0	DELHI GAS PIPELIN
-MATOMAS NORTH AMERICA INC				RECEIVED: 11/24/81 JA: OK					
8207839	11663	3512920658		102-2		TAYLOR -1-2	TAYLOR RANCH	663.0	EL PASO NATURAL G
-NOBLE OPERATING INC				RECEIVED: 11/19/81 JA: OK					
8207816	11216	3509322175		103		CASE #2	NE PHROSO	0.0	PHILLIPS PETROLEU
-NOBLE OPERATING INC				RECEIVED: 11/24/81 JA: OK					
8207850	11215	3509322174		103		DVORAK #2	NE PHROSO	0.0	PHILLIPS PETROLEU
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 11/24/81 JA: OK					
8207848	11232	3501720394		108		CROSE A#1	PIEDMONT	14.5	PANHANDLE EASTERN
8207847	11076	3501721460		108		WIEMAN A-#1	N CONCHO	8.0	PANHANDLE EASTERN
-RED EAGLE OIL CO				RECEIVED: 11/19/81 JA: OK					
8207808	09864	3509322111		103		DORA #1	NW FAIRVIEW	110.0	PIONEER GAS PRODU
8207809	09865	3509322059		103		FLORENCE NO 1	NW FAIRVIEW	110.0	PIONEER GAS PRODU
-RENEGADE LAND & MINERAL CO INC				RECEIVED: 11/24/81 JA: OK					
8207854	11519	3514321433		103		MILLER #1	EAST BIRDCREEK	330.0	PHILLIPS PETROLEU
-SENECA OIL COMPANY				RECEIVED: 11/19/81 JA: OK					
8207799	11546	3504321151		103		CHAIN #1-7	OAKWOOD	365.0	DELHI GAS PIPELIN
-SOUTHLAND ROYALTY CO				RECEIVED: 11/19/81 JA: OK					
8207810	11344	3515121093		103		ROBERTS #1-16	NE LOVEDALE	25.0	EL GRANDE PIPELIN
-ST JOE PETROLEUM (US) CORP				RECEIVED: 11/19/81 JA: OK					
8207801	11517	3510321050		103		TURNER #1		182.0	CITIES SERVICE GA
-STEPHENS PRODUCTION COMPANY				RECEIVED: 11/19/81 JA: OK					
8207820	14661	3502920293		102-2		REGINA MAYER #5-33	CENTRAHOMA	75.0	EL PASO NATURAL G
-TEXACO INC				RECEIVED: 11/19/81 JA: OK					
8207813	11407	3507323044		103		EVELYN LESTER #1	OKARCHE N E	117.0	CONOCO INC
-TEXAS OIL & GAS CORP				RECEIVED: 11/20/81 JA: OK					
8207832	11514	3512920570		103		PATTON B #1	E ROLL	105.4	DELHI GAS PIPELIN
8207833	11515	3509321929		103		RAZOOK #1	CHEYENNE VALLEY	115.0	DELHI GAS PIPELIN
-UNIVERSAL RESOURCES CORPORATION				RECEIVED: 11/19/81 JA: OK					
8207811	11347	3501721481		103		HERBY 1-10	N YUKON	155.1	MUSTANG GAS PRODU
-UNIVERSAL RESOURCES CORPORATION				RECEIVED: 11/24/81 JA: OK					
8207844	10131	3507322638		103		VAIL 1-30		281.1	PHILLIPS PETROLEU
-W C PAYNE				RECEIVED: 11/19/81 JA: OK					
8207800	11540	3508700000		108		ROBINSON #1	SOUTHWEST WAYNE	0.0	SUN GAS CO
-WILLIS EXPLORATION INC				RECEIVED: 11/19/81 JA: OK					
8207812	11352	3501721913		103		CHERYL #1	NORTH LAKEVIEW AIRPORT	36.0	CONOCO INC
-WOOD ENTERPRISES INC				RECEIVED: 11/24/81 JA: OK					
8207838	14625	3511900000		102-4		C S O DEAN #1 (119-60837)	MARKHAM	18.0	PARKS ENERGY INVE
8207838	14625	3511900000		103		C S O DEAN #1 (119-60837)	MARKHAM	18.0	PARKS ENERGY INVE

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
UTAH DIVISION OF OIL,GAS, & MINING									
-AMOCO PRODUCTION CO						RECEIVED: 11/30/81 JA: UT			
8207943	K 121-B	4304330130		102-2		CHAMPLIN 458 AMOCO F #2	ANSCHUTZ RANCH EAST - NU	1095.0	EL PASO NATURAL G
WEST VIRGINIA DEPARTMENT OF MINES									
-ALLEGHENY LAND & MINERAL COMPANY						RECEIVED: 11/25/81 JA: WV			
8207902		4708300428		103		A - 1000	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8207898		4709702218		103		A - 1003	WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8207900		4708300408		103		A - 985	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8207899		4708300391		103		A - 986	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8207901		4708300427		103		A - 987	ROARING CREEK DISTRICT	0.0	COLUMBIA GAS TRAN
-CABOT OIL & GAS CORP						RECEIVED: 11/25/81 JA: WV			
8207880		4708100323		108		BEAVER COAL B-1	TRAP HILL	11.0	CABOT CORP
8207917		4703903728		103		G C WEBSTER #1	JEFFERSON *	52.0	TENNESSEE GAS PIP
8207918		4703903728		107-DV		G C WEBSTER #1	JEFFERSON	52.0	TENNESSEE GAS PIP
8207914		4707900995		103		J L MCLEAN A-49	UNION	49.0	TENNESSEE GAS PIP
8207915		4701100683		103		JENKINS #1	UNION	12.0	COLUMBIA GAS TRAN
8207916		4701100683		107-DV		JENKINS #1	UNION	12.0	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION						RECEIVED: 11/25/81 JA: WV			
8207905		4703301257		103		BENJAMIN WILSON 12498	COAL	6.9	GENERAL SYSTEM PU
8207911		4709100168		103		CECIL O WOLFE 12552	KNOTTSVILLE	5.4	GENERAL SYSTEM PU
8207893		4702103029		103		D & E STALNAKER 12496	CENTER	22.7	GENERAL SYSTEM PU
8207909		4703301926		103		D M COLE 12514	UNION	16.1	GENERAL SYSTEM PU
8207889		4701900303		103		GAULEY MOUNTAIN COAL 12243	FALLS	4.3	GENERAL SYSTEM PU
8207903		4709509001		103		H M GILLESPIE 12680	UNION	4.6	GENERAL SYSTEM PU
8207895		4707700202		103		HOY B BROWN 12615	VALLEY	7.6	GENERAL SYSTEM PU
8207910		4702103211		103		J E ARBUCKLE 12523	CENTER	3.6	GENERAL SYSTEM PU
8207892		4702103024		103		JAMES C BUSH 12494	TROY	3.3	GENERAL SYSTEM PU
8207896		4707700206		103		JOHN E PRICE 12667	LYON	27.0	GENERAL SYSTEM PU
8207904		4709701843		103		LINN PERRINE 12542	LINN PERRINE	7.0	GENERAL SYSTEM PU
8207891		4704102119		103		LOUIS BENNETT 12398	COLLINS SETTLEMENT	2.0	GENERAL SYSTEM PU
8207897		4708100544		103		OSCAR B KIRBY 12649	SHADY SPRING	0.0	GENERAL SYSTEM PU
8207890		4705500038		103		POCAHONTAS LAND CORP 12205	ROCK	41.5	GENERAL SYSTEM PU
8207894		4704900675		103		WILLIS J DAUGHERTY 12668	UNION	10.6	GENERAL SYSTEM PU
-ENERGY UNLIMITED INC						RECEIVED: 11/25/81 JA: WV			
8207878		4707320832		103		ROBERT MATTINGLY #2	GRANT	2.0	CONSOLIDATED GAS
-FRF OIL & GAS PROPERTIES						RECEIVED: 11/25/81 JA: WV			
8207876		4708300295		107-DV		KING #1 & ARMAND #2 RICOTTILLI #2	ROARING CREEK DISTRICT	55.0	COLUMBIA GAS TRAN
8207875		4708300294		107-DV		KING #1A ARMAND #1 RICOTTILLI #1	ROARING CREEK DISTRICT D	55.0	COLUMBIA GAS TRAN
8207877		4708300326	D	107-DV		KING #2A	ROARING CREEK DISTRICT D	68.0	COLUMBIA GAS TRAN
8207887		4708300328		107-DV		KING #2B	ROARING CREEK DISTRICT D	70.0	COLUMBIA GAS TRAN
8207888		4708300349		107-DV		KING #2C	ROARING CREEK DISTRICT	0.0	COLUMBIA GAS TRAN
8207874		4708300384		107-DV		TALBOTT #3	LAUREL RUN	50.0	COLUMBIA GAS TRAN
-J & J ENTERPRISES INC						RECEIVED: 11/25/81 JA: WV			
8207908		4701702926		103		J-337	GREENBRIER	20.0	CONSOLIDATED GAS
8207907		4709702219		103		J-432	BUCKHANNON	20.0	COLUMBIA GAS TRAN
8207906		4701702785		103		J-52	NEW MILTON	20.0	CONSOLIDATED GAS
-R & B PETROLEUM INC						RECEIVED: 11/25/81 JA: WV			
8207913		4708101072		103		WILLIAMS #1	VALLEY	10.8	PARTNERSHIP PROPE
8207912		4709701847		103		WRIGHT #1	WARREN-UNION	10.8	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	O	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-STERLING DRILLING & PROD CO INC				RECEIVED: 11/25/81 JA: WY					
8207884		4701501674		108		ALOI #12 SDP #176	BUFFALO DISTRICT	0.0	EQUITABLE GAS CO
8207885		4701501687		108		ALOI #27 SDP #187	BUFFALO DISTRICT	0.0	EQUITABLE GAS CO
8207879		4701501656		108		ALOI #8 SDP #138	BUFFALO DISTRICT	21.5	EQUITABLE GAS CO
8207881		4701501516		108		S NOTTINGHAM #2 SDP #63	OTTER DISTRICT	0.0	EQUITABLE GAS CO
8207886		4701501691		108		STAHLMAN #200 SDP #200	BUFFALO DISTRICT	0.0	EQUITABLE GAS CO
8207883		4708703216		108		STUMP #155 SDP #155	GEARY DISTRICT	0.0	COLUMBIA GAS TRAN
8207882		4708703205		108		SWIGER #149 SDP #149	GEARY DISTRICT	0.0	COLUMBIA GAS TRAN
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WYOMING OIL & GAS CONSERVATION COMMISSION									
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-AMOCO PRODUCTION CO				RECEIVED: 11/27/81 JA: WY					
8207951	NG 229-81	4900720663		107-TF		CHAMPLIN 261 AMOCO L #1	STANDARD DRAW-MESAVERDE	33.0	CITIES SERVICE GA
8207953	NG 211-81	4904120369		103		CHAMPLIN 352 AMOCO E #1	GLASSCOCK HOLLOW	292.0	MOUNTAIN FUEL SUP
8207959	NG 228-81	4904120369		102-2		CHAMPLIN 352 AMOCO E #1	GLASSCOCK HOLLOW	292.0	MOUNTAIN FUEL SUP
8207952	NG 213-81	4900720567		107-TF		CHAMPLIN 559 AMOCO C #1	STANDARD DRAW-MESAVERDE	14.4	CITIES SERVICE GA
8207964	NG 227-81	4903721427		102-2		FIVE MILE GULCH #9 (LEWIS)	WILDCAT-LEWIS	33.0	CITIES SERVICE GA
8207949	NG 230-81	4903721427		107-TF		FIVE MILE GULCH UNIT #9 (MESAVERDE)	WILDCAT-MESAVERDE	89.0	CITIES SERVICE GA
8207963	NG 228-81	4903721486		107-TF		TIERNEY II UNIT #11-31 (MESAVERDE)	TIERNEY II UNIT-MESAVERD	24.7	CITIES SERVICE GA
-BELCO PETROLEUM CORPORATION				RECEIVED: 11/27/81 JA: WY					
8207950	NG 197-81	4903520590		103		BUDD 5-33	MOUNTAIN HOME	0.0	NORTHWEST PIPELIN
8207962	NG 196-81	4902320399		103		GRBU 78-13	GREEN RIVER BEND UNIT	0.0	NORTHWEST PIPELIN
8207961	NG 195-81	4902320401		103		GRBU 79-12	GREEN RIVER BEND UNIT	0.0	NORTHWEST PIPELIN
-CHAMPLIN PETROLEUM COMPANY				RECEIVED: 11/27/81 JA: WY					
8207957	NG 222-81	4903721525		107-TF		HIGGINS 13A	HIGGINS UNIT	39.6	COLORADO INTERSTA
8207958	NG 221-81	4903721683		107-TF		UPRR 4-21 #6	SIBERIA RIDGE	310.0	COLORADO INTERSTA
-CHANCELLOR & DOLEZAL				RECEIVED: 11/27/81 JA: WY					
8207965	NG 226-81	4900720713		102-2		CHAMPLIN 258 AMOCO A 2-5	WILDCAT	180.0	NORTHERN NATURAL
-DAVIS OIL COMPANY				RECEIVED: 11/27/81 JA: WY					
8207954	NG 210-81	4900925944		103		HOADLEY #1	NORTH HILIGHT	97.4	PHILLIPS PETROLEU
8207955	NG 214-81	4900525808		102-2		TERRA #1	WILDCAT	17.2	PHILLIPS PETROLEU
-INEXCO OIL COMPANY				RECEIVED: 11/27/81 JA: WY					
8207960	NG 217-81	4900921925		102-2		MILLER #1-8	SHAWNEE	55.0	INEXCO GASOLINE P
-MARATHON OIL COMPANY				RECEIVED: 11/27/81 JA: WY					
*8207956	NG 223-81	4902921015		103		SIDNEY #15 (TENSLEEP FORMATION)	OREGON BASIN	10.6	COLORADO INTERSTA
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** U.S. GEOLOGICAL SURVEY - METAIRIE,LA									
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-C & K PETROLEUM INC				RECEIVED: 11/25/81 JA: LA 3					
8207926	G1-2198	1771540282		102-5		SOUTH TIMBALIER 185 #B-6A	SOUTH TIMBALIER	0.0	TRANSCONTINENTAL
-CNG PRODUCING COMPANY				RECEIVED: 11/25/81 JA: LA 3					
8207921	G1-2189	1771040819		102-5		A-1S1	EUGENE ISLAND	1500.0	COLUMBIA GAS TRAN
8207932	G1-2241	1771040895		102-5		A-2S2	EUGENE ISLAND	800.0	COLUMBIA GAS TRAN
8207934	G1-2343	1771040839		102-5		A-3S1	EUGENE ISLAND	799.0	COLUMBIA GAS TRAN
8207923	G1-2286	1771040823		102-5		A-6	EUGENE ISLAND	725.0	COLUMBIA GAS TRAN
8207928	G1-2214	1771040908		102-5		A-8S1	EUGENE ISLAND	800.0	COLUMBIA GAS TRAN
8207931	G1-2242	1771040908		102-5		A-8S2	EUGENE ISLAND	800.0	COLUMBIA GAS TRAN
8207936	G1-2287	1771040916		102-5		A-9S1	EUGENE ISLAND	810.0	COLUMBIA GAS TRAN
8207940	G1-2288	1771040916		102-5		A-9S2	EUGENE ISLAND	733.0	COLUMBIA GAS TRAN
-KERR-MCGEE CORPORATION				RECEIVED: 11/25/81 JA: LA 3					
8207939	G1-2194	1771240239		102-5		OCS G-1025 #A-12	SHIP SHOAL	47.0	TRANSCONTINENTAL
8207925	G1-2354	1771540356		102-1		OCS-G-4119 #6	SOUTH TIMBALIER	1679.0	TENNESSEE GAS PIP
8207924	G1-2355	1771540356		102-1		OCS-G-4119 #6-D	SOUTH TIMBALIER	474.0	TENNESSEE GAS PIP

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-PLACID OIL COMPANY						RECEIVED: 11/25/81 JA: LA 3			
8207930	G1-2349	1770740360		107-DP		OCS-G-2600 #E-12	SOUTH MARSH ISLAND	3467.5	TRUNKLINE GAS CO
-SHELL OIL CO						RECEIVED: 11/25/81 JA: LA 3			
8207942	G1-2164	1771500769	D	102-5		OCS-G 1361 A-15A	SOUTH TIMBALIER	-54.0	UNITED GAS PIPE L
8207938	G1-2195	1770040246		102-5		OCS-G 2825 JA-2A	WEST CAMERON	2.7	TENNESSEE GAS PIP
8207927	G1-2196	1770040415		102-5		OCS-G 2825 JA-4A	WEST CAMERON	2.7	TENNESSEE GAS PIP
8207920	G1-2188	1772340057		102-5		SP 61 OCS-G 1614 #C-45-A	SOUTH PASS	150.0	SOUTHERN NATURAL
-SUPERIOR OIL CO						RECEIVED: 11/25/81 JA: LA 3			
8207935	G1-2184	1770040289		102-5		OCS - 0244 NO B-11	WEST CAMERON	200.0	MICHIGAN-WISCONSI
8207937	G1-2199	1770940364		102-5		OCS 0797 #F-2	EUGENE ISLAND	1000.0	TRANSCONTINENTAL
-UNION OIL COMPANY OF CALIF						RECEIVED: 11/25/81 JA: LA 3			
8207941	G1-2181	1770540072		102-5		OCS-G 2071 #A-3	VERMILLION	400.0	TEXAS EASTERN TRA
-UNION TEXAS PETROLEUM						RECEIVED: 11/25/81 JA: LA 3			
8207922	G1-2112	1771040848		102-5		OCS-G-3159 A-8	EUGENE ISLAND	2600.0	NORTHERN NATURAL
-CITIES SERVICE COMPANY						RECEIVED: 11/25/81 JA: TX 3			
8207933	G1-2267	4270340055		102-1		MATAGORDA ISLAND 686 #A-6	MATAGORDA ISLAND	3960.0	NORTHERN NATURAL
-EXXON CORPORATION						RECEIVED: 11/25/81 JA: TX 3			
8207929	G1-2356	4271140519		102-1		OCS-G 3486 #B-7	HIGH ISLAND	365.0	COLUMBIA GAS TRAN
-HOUSTON OIL & MINERALS CORPORATION						RECEIVED: 11/25/81 JA: TX 3			
8207919	G1-2347	4270330218		102-1		OCSG-4136 #B-1	MATAGORDA ISLAND	3700.0	
** U.S. GEOLOGICAL SURVEY - ALBUQUERQUE,NM									
-EL PASO NATURAL GAS COMPANY						RECEIVED: 08/28/79 JA: NM 4			
7922343	NM-1620-79	3004521567		108		RIDDLE B #9	AZTEC PC	15.0	EL PASO NATURAL G

OTHER PURCHASERS

8207948 MONTANA POWER CO
8207956 CODY GAS CO

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203, and 275.204, file a protest with the Commission on or before January 13, 1982.

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.

[FR Doc. 81–36985 Filed 12–28–81; 8:45 am]

BILLING CODE 6717–01–M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: December 22, 1981.

JD NO	JA DKT	API NO	D	SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION								
-ABARTA OIL & GAS INC				RECEIVED: 11/25/81	JA: NY			
8208011	1654	3102915684		103	ABARTA B80-101	LAKE SHORE	36.0	NATIONAL FUEL GAS
8208010	1655	3102915687		103	ABARTA E80-104 #1	LAKE SHORE	29.0	NATIONAL FUEL GAS
-ANGELA P HOPKINS				RECEIVED: 11/25/81	JA: NY			
8208033	1280	3101311956		108	ANGELA P HOPKINS #1105	LAKESHORE	11.3	NATIONAL FUEL GAS
8208030	1281	3101312756		108	HOPKINS ROTUNDA #7592	LAKESHORE	18.3	NATIONAL FUEL GAS
-APPALACHIAN BASIN OIL & GAS				RECEIVED: 11/25/81	JA: NY			
8208028	1286	3101304535		108	MARTIN #420	LAKESHORE	7.0	NATIONAL FUEL GAS
8208032	1288	3101305034		108	PAGLIA #439	LAKESHORE	8.2	NATIONAL FUEL GAS
8208029	1285	3101304711		108	SMITH #423	LAKESHORE	3.0	NATIONAL FUEL GAS
8208031	1287	3101304460		108	SOMMERS TUTTLE #407	LAKESHORE	8.0	NATIONAL FUEL GAS
-BEREA OIL AND GAS CORPORATION				RECEIVED: 11/25/81	JA: NY			
8208005	1744	3101316060		103	DAVID BALL UNIT #1	GERRY	25.0	COLUMBIA GAS TRAN
8208006	1745	3101316064		103	GRANT BROCKWAY #1	GERRY	30.0	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED: 11/25/81	JA: NY			
8208034	1543	3101312805		103	LYLE W COCHRAN WN-1644	NORTH CLYMER	0.0	GENERAL SYSTEM PU
-ECLIPSE MANAGEMENT ASSOCIATES INC				RECEIVED: 11/25/81	JA: NY			
8208036	1422	3101314288		103	BELL #1	LAKE SHORE	30.8	NATIONAL FUEL GAS
8208035	1787	3101314606		103	BROWN #3 #3152	LAKE SHORE	0.0	NATIONAL FUEL GAS
8208038	1786	3101315817		103	MARTIN #1 EE #3	LAKE SHORE	10.0	NATIONAL FUEL GAS
8208037	1788	3101315606		103	RIVARD #2 EE	LAKE SHORE	13.0	NATIONAL FUEL GAS
-ENVIROGAS INC				RECEIVED: 11/25/81	JA: NY			
8207978	1362	3101315723		102-2	A FIRSTER #1	STEBBINS CORNERS	18.0	COLUMBIA GAS TRAN
8207966	1278	3101315180		102-2	C BANK #1	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207984	1334	3101315341		102-2	C DINSBIER #1	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207982	1305	3101315456		102-2	C LATTA #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8207985	993	3101315184		102-2	C WEATHERLOW #1	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207990	998	3101315185		102-2	C WEATHERLOW #2	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207974	1428	3101315474		102-2	C WILLIAMS #1	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207980	1272	3101315489		102-2	CHAUTAUQUA INSTITUTION #6	CHAUTAUQUA	18.0	COLUMBIA GAS TRAN
8207986	1425	3101315775		102-2	D HAYES #1	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207981	1333	3101315344		102-2	D LIMBERG #1	STEBBINS CORNERS	18.0	COLUMBIA GAS TRAN
8207989	1426	3101315857		102-2	F VROOMAN #1	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207977	1276	3101315455		102-2	H GIBBS #3	CHAUTAUQUA	18.0	COLUMBIA GAS TRAN
8207987	995	3101315221		102-2	H KEOPKA #3	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207988	994	3101315209		102-2	H KEOPKA #4	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207972	890	3101314631		102-2	I COCHRANE #3	LAKESHORE	18.0	NATIONAL FUEL GAS
8207983	1424	3101315186		102-2	J BOWEN #2	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8208039	979	3101315025		102-2	J BRIGHTMAN #1	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207976	1427	3101315202		102-2	L KERSHAW #2	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207973	1525	3101315201		102-2	L KERSHAW #3	SUMMERDALE	18.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8207967	982	3101315008		102-2		L NICKERSON #1	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207971	989	3101315007		102-2		L NICKERSON #2	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207968	986	3101315006		102-2		L NICKERSON #4	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207991	997	3101315005		102-2		NICKERSON #5	STEBBINS CORNERS	18.0	COLUMBIA GAS TRAN
8207993	1273	3101315696		102-2		P PERU #1	WILDCAT	18.0	NATIONAL FUEL GAS
8207996	1274	3101315641		102-2		R DAVIS #1	STEBBINS CORNERS	18.0	COLUMBIA GAS TRAN
8207992	1277	3101315642		102-2		R DAVIS #2	STEBBINS CORNERS	18.0	COLUMBIA GAS TRAN
8207979	1275	3101315182		102-2		R GEER #2	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207995	1297	3101315335		102-2		R HEWES #2	STEBBINS CORNERS	18.0	COLUMBIA GAS TRAN
8207978	981	3101315233		102-2		R MONCKTON #1	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207969	980	3101315316		102-2		R P HEWES #3	SUMMERDALE	18.0	COLUMBIA GAS TRAN
8207975	1559	3101315894		102-2		R WASSINK #8	CLYMER	18.0	NATIONAL FUEL GAS
8207994	1296	3101315342		102-2		R WILCOX #1	SUMMERDALE	18.0	COLUMBIA GAS TRAN
-HEINTZ OIL & GAS CORP				RECEIVED: 11/25/81 JA: NY					
8208023	1284	3101301464		108		LINCOLN #1101	LAKESHORE	7.0	NATIONAL FUEL GAS
8208027	1282	3101301157		108		SCHAFER #1102	LAKE SHORE	5.0	NATIONAL FUEL GAS
8208824	1283	3101302026		108		YOUNG #1100	LAKESHORE	6.0	NATIONAL FUEL GAS
-J M RESOURCES				RECEIVED: 11/25/81 JA: NY					
8207999	1604	3101313237		108		FORBES-RIZZO #3	LAKESHORE	11.8	NATL FUEL GAS DIS
-LENAPE RESOURCES CORP				RECEIVED: 11/25/81 JA: NY					
*8208015	1794	3112113997		103		BERTIE GASTON #1	LEICESTER	20.0	ELIZABETHTOWN GAS
*8208020	1798	3103713987		103		CLAYTON G; FOUND #1	PAVILION	20.0	ELIZABETHTOWN GAS
*8208021	1797	3103713961		103		GRACE CROSS #1	PAVILION	20.0	ELIZABETHTOWN GAS
*8208009	1800	3105113967		103		JAMES HOAG #1	PAVILION	20.0	ELIZABETHTOWN GAS
*8208012	1801	3105114283		103		JAMES HOAG #2	PAVILION	20.0	ELIZABETHTOWN GAS
*8208022	1795	3103713989		103		JOHN CARNEY JR. #1	PAVILION	20.0	ELIZABETHTOWN GAS
*8208013	1796	3105114450		103		JOHN F. CRIPPS #1	PAVILION	20.0	ELIZABETHTOWN GAS
*8208019	1799	3103713988		103		LAWRENCE GLEBER #1	PAVILION	20.0	ELIZABETHTOWN GAS
*8208018	1804	3103713568		103		N. THATER #1	PAVILION	20.0	ELIZABETHTOWN GAS
*8208014	1793	3112113971		103		RICHARD L. BLANKE #2	LEICESTER	20.0	ELIZABETHTOWN GAS
*8208016	1802	3103713966		103		RICHARD S. RIDLEY #1	PAVILION	20.0	ELIZABETHTOWN GAS
*8208017	1803	3103713986		103		SPENCER #1	PAVILION	20.0	ELIZABETHTOWN GAS
-LEO & VERONICA NOCEK				RECEIVED: 11/25/81 JA: NY					
8207998	1600	3101311602		108		NOCEK #1	LAKESHORE	2.3	NATIONAL FUEL GAS
-OILMARK & CO INC				RECEIVED: 11/25/81 JA: NY					
8208001	1140	3101315363		103		BUSAN #1	LAKESHORE	12.0	NATIONAL FUEL GAS
8208004	1135	3101314834		103		KOPROWSKI #1	LAKESHORE	10.0	NATIONAL FUEL GAS
8208000	1137	3101314835		103		KOPROWSKI #2	LAKESHORE	10.0	NATIONAL FUEL GAS
8208002	1138	3101314774		103		POTTER #1	LAKESHORE	14.0	NATIONAL FUEL SUP
8208003	1136	3101315310		103		R RAMMELT #1	LAKESHORE	12.0	NATIONAL FUEL GAS
-TRAHAN PETROLEUM INC				RECEIVED: 11/25/81 JA: NY					
8208008	1601	3101312542		108		LENART - N Y 12 31-013-12542	PANAMA	12.0	COLUMBIA GAS TRAN
8208007	1602	3101312530		108		MIKTUK - N Y 63 31-013-12530	PANAMA	12.0	COLUMBIA GAS TRAN
-TROY PIPE AND SUPPLY CO INC				RECEIVED: 11/25/81 JA: NY					
8208025	1408	3101311581		108		HAMM #1	PORTLAND	0.0	NATIONAL FUEL GAS
8208026	1407	3101311652		108		HAMM #3	PORTLAND	6.1	NATIONAL FUEL GAS
-US ENERGY DEVELOPMENT CORP				RECEIVED: 11/25/81 JA: NY					
8207997	1756	3101315407		103		A WOLFF #2	WESTFIELD	20.0	COLUMBIA GAS TRAN

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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

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-ARROWHEAD GAS PRODUCERS INC				RECEIVED: 11/27/81 JA: PA					
8208040	8945	3712329107		107-TF		CARL FAUST #1	SUGAR GROVE	60.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-ATLAS RESOURCES INC						RECEIVED: 11/27/81 JA: PA			
8208041	9784	3706325640		102	-2	ORMISTON #2	GREEN	10.0	COLUMBIA GAS TRAN
-BEREA OIL AND GAS CORPORATION						RECEIVED: 11/27/81 JA: PA			
8208046	9127	3712329187		107	-TF	A C GRIBSHAW UNIT #2	WILDCAT	20.0	COLUMBIA GAS TRAN
8208045	9079	3712328494		107	-TF	F & E NICHOLS #1	WILDCAT	20.0	COLUMBIA GAS TRAN
8208042	9076	3712328499		107	-TF	M J WOJTOWICZ #5	WILDCAT	20.0	COLUMBIA GAS TRAN
8208043	9077	3712328495		107	-TF	M J WOJTOWICZ UNIT #1	WILDCAT	20.0	COLUMBIA GAS TRAN
8208044	9078	3712328497		107	-TF	M Z LAY #1	WILDCAT	20.0	COLUMBIA GAS TRAN
-BITTINGER DRILLING CO						RECEIVED: 11/27/81 JA: PA			
8208048	9810	3712900000		108		THOMAS MARTIN #1	WASHINGTON	2.0	THE PEOPLES NATUR
8208047	9809	3712900000		108		THOMAS MARTIN #2	WASHINGTON	2.0	PEOPLES NATURAL G
-CABOT OIL & GAS CORP						RECEIVED: 11/27/81 JA: PA			
8208056	8957	3703921092		107	-TF	ALBERT D MCNAMARA #1	EAST MEAD	50.0	TENNESSEE GAS PIP
8208080	9222	3703921179		107	-TF	ALLAN HART #5	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208050	8951	3703920918		107	-TF	CHARLES IRWIN #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208058	8959	3703920831		107	-TF	DONALD HOLSTEN #2	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208057	8958	3703920832		107	-TF	DONALD L HOLSTEN #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208076	9041	3703920741		107	-TF	E & M KISER #1	UNION	50.0	TENNESSEE GAS PIP
8208068	8978	3703920898		107	-TF	EDWARD AND ELLA RUNG #1-S	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208052	8953	3703920820		107	-TF	FRANK AND MARIE LAUSH #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208062	8972	3703920873		107	-TF	FRANK NADER #2	GREENWOOD	50.0	TENNESSEE GAS PIP
8208083	9228	3703921213		107	-TF	GARY MOORHEAD #1	WAYNE	50.0	TENNESSEE GAS PIP
8208077	9043	3703921118		107	-TF	GLEN FREYERMUTH #1	UNION	50.0	TENNESSEE GAS PIP
8208074	8984	3703920727		107	-TF	HARRY ZIMMER #1	UNION	50.0	TENNESSEE GAS PIP
8208049	8589	3703921103		107	-TF	HELEN DENNIS #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208070	8980	3703920964		107	-TF	HELEN TODD #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208055	8956	3708520215		107	-TF	HERALD HELTZEL #2	FRENCH CREEK	50.0	TENNESSEE GAS PIP
8208063	8973	3703920701		107	-TF	HUGH PETERSON #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208061	8971	3703920855		107	-TF	JAMES D MUMFORD #2	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208064	8974	3703920852		107	-TF	JOHN AND ROSE PODOSZLO #2	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208065	8975	3703920851		107	-TF	JOHN PODOSZLO ET AL #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208075	9039	3708320259		107	-TF	JOHN SCHNEIDER #3-S	DEER CREEK	50.0	TENNESSEE GAS PIP
8208067	8977	3703921115		107	-TF	JOHN W ROBERTS #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208084	9232	3703921210		107	-TF	JOSEPH GANDZIARSKI #1	GREENWOOD	50.0	TENNESSEE GAS PIP
8208051	8952	3703920827		107	-TF	KEBERT DEVELOPERS INC #A-1	GREENWOOD	50.0	TENNESSEE GAS PIP
8208054	8955	3703920826		107	-TF	LARRY HART #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208066	8976	3703920828		107	-TF	MARILYN RAINEY #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208069	8979	3703920967		107	-TF	MENNO SOMMERS #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208082	9226	3703921185		107	-TF	NEAL LANG #1	RANDOLPH	50.0	TENNESSEE GAS PIP
8208078	9045	3703921186		107	-TF	NEAL LANG #2	RANDOLPH	50.0	TENNESSEE GAS PIP
8208071	8981	3703921117		107	-TF	PHILIP WHEELING #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208081	9224	3703921227		107	-TF	PRESSLEY HILLIARD #1	WAYNE	50.0	TENNESSEE GAS PIP
8208079	9047	3703921128		107	-TF	RICHARD DUNN #1	EAST FAIRFIELD	50.0	TENNESSEE GAS PIP
8208053	8954	3703920755		107	-TF	RONALD R LONGO #1-S	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208059	8969	3703920966		107	-TF	RUDOLPH MION #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208072	8982	3703920768		107	-TF	THELSTON W WILLIAMS #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208085	9234	3703921178		107	-TF	VANCE RUNG #2	GREENWOOD	50.0	TENNESSEE GAS PIP
8208060	8975	3703920821		107	-TF	W & C MOTZING #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8208086	9287	3703921208		107	-TF	W L DUNN CONSTRUCTION #2	EAST FAIRFIELD	50.0	TENNESSEE GAS PIP
8208073	8983	3703920767		107	-TF	WAGNERCREST FARMS #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
-CARDINAL OIL CO						RECEIVED: 11/27/81 JA: PA			
8208087	8986	3703920624		107	-TF	F SABLYAK #79-14 CRA-20624	CONNEAUT	0.0	COLUMBIA GAS TRAN
-CENTER BAR GAS CO						RECEIVED: 11/27/81 JA: PA			

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8208088	8410	3703920563		107-TF		EARL E HAMILTON #78-2 PA PER CRA-2*	CONNEAUT	0.0	COLUMBIA GAS TRAN
-COMPASS DEVELOPMENT INC				RECEIVED: 11/27/81 JA: PA					
8208090	8324	3705322379		103		EPSILON 15	WILLIAMS	0.0	
8208092	8329	3705322767		103		FOREST ASSOCIATES 4 (PD-64)	DAUBENSPECK	0.0	
8208093	8330	3705322768		103		FOREST ASSOCIATES 5 (PD-65)	DAUBENSPECK	0.0	
8208094	8333	3705322769		103		FOREST ASSOCIATES 6 (PD-66)	DAUBENSPECK	0.0	
8208091	8328	3705322770		103		FOREST ASSOCIATES 7 (PD-67)	DAUBENSPECK	0.0	
8208089	8323	3705322677		103		SHERMAC DEEP 2 (CORRY I-2)	SHERMAC	0.0	
-CUMBERLAND OIL CORP				RECEIVED: 11/27/81 JA: PA					
8208095	9757	3712329663		102-2		J RUPCZYK #3	SUGAR GROVE	20.0	NATIONAL FUEL GAS
-ENVIROGAS INC				RECEIVED: 11/27/81 JA: PA					
8208105	9145	3704921201		107-TF		A SCHULTZ #2	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208120	9160	3704921147		107-TF		C MILLER #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208109	9149	3704921082		107-TF		C POST #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208108	9148	3704921119		107-TF		C POST #2	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208103	9143	3704921055		107-TF		C SCHULTZ #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208119	9159	3704921087		107-TF		E FINDLEY #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208117	9157	3704921202		107-TF		G KRESS #3	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208125	9165	3704921195		107-TF		G LUKE #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208107	9147	3704921059		107-TF		G SCHOENFELDT #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208106	9146	3704921060		107-TF		G SCHOENFELDT #2	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208104	9144	3704920943		107-TF		G SPINKS #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208116	9156	3704921134		107-TF		GREENFIELD TOWNSHIP #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208113	9153	3704921109		107-TF		H GLOVER #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208124	9164	3704921110		107-TF		H MCINTYRE #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208110	9150	3704920975		107-TF		H ORTON #3	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208121	9161	3704921184		107-TF		J COOK #2	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208112	9152	3704920905		107-TF		J SCHULTZ #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208102	9142	3704921144		107-TF		J SZYBOWSKI #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208098	9138	3704921222		107-TF		L MORTON #1	WILDCAT	18.0	NATIONAL FUEL GAS
8208131	9171	3704920720	D	107-TF		L MORTON #2	WILDCAT	18.0	NATIONAL FUEL GAS
8208100	9140	3704921041		107-TF		L SCHULTZ #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208099	9139	3704921054		107-TF		M ROAN #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208127	9167	3704920891		107-TF		N MORSE #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208128	9168	3704920945		107-TF		N MORSE #2	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208126	9166	3704921031		107-TF		N MORSE #3	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208130	9170	3704921032		107-TF		N MORSE #4	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208129	9169	3704921033		107-TF		N MORSE #5	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208096	9136	3704921088		107-TF		NORTH EAST BOROUGH #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208097	9137	3704921120		107-TF		NORTH EAST HUNTING & FISHING #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208123	9163	3704921194		107-TF		R MARSHALL #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208115	9155	3704921011		107-TF		R MITCHELL #1	ERIE DEEP	18.0	NATIONAL FUEL GAS
8208101	9141	3704921146		107-TF		R THORNTON #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208111	9151	3704921118		107-TF		T SAUNDERS #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208118	9158	3704920955		107-TF		W GULCZNSKI #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208122	9162	3704921012		107-TF		W LUKE #1	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
8208114	9154	3704921142		107-TF		X MEEHL #4	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS
-J & J ENTERPRISES INC				RECEIVED: 11/27/81 JA: PA					
8208132	7266	3706321647		108		G H REAM #1	RAYNE	12.2	T W PHILLIPS GAS
8208133	7267	3706321685		108		G M KESSLER #1	RAYNE	10.5	T W PHILLIPS GAS
8208134	7268	3706321640		108		SARA J DAVIS #1	WASHINGTON	16.8	T W PHILLIPS GAS
-JENNIFER PETROLEUMS LTD				RECEIVED: 11/27/81 JA: PA					
8208136	9176	3712327873		107-TF		LITTLE #1	FREEHOLD	33.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8208135	9175	3712327837		107-TF	SAVKO #1	FREEHOLD	45.0	COLUMBIA GAS TRAN
8208137	9178	3712328264		107-TF	SAVKO #1A	FREEHOLD	40.0	COLUMBIA GAS TRAN
-MONROE RESOURCES LTD				RECEIVED: 11/27/81 JA: PA				
8208142	9064	3712328589		107-TF	A GOURLEY #1	LOTTSVILLE	38.0	COLUMBIA GAS TRAN
8208140	7369	3712328591		102-2	JAMES GOURLEY #1	SUGAR GROVE	30.0	COLUMBIA GAS TRAN
8208139	7368	3712328592		102-2	JAMES GOURLEY #2	LOTTSVILLE	40.0	COLUMBIA GAS TRAN
8208138	7367	3712328588		102-2	JAMES GOURLEY #3	LOTTSVILLE	50.0	COLUMBIA GAS TRAN
8208141	6072	3712328386		103	SWEENEY #2	SUGAR GROVE	65.0	COLUMBIA GAS TRAN
-RED LEAF OIL LTD				RECEIVED: 11/27/81 JA: PA				
8208144	8996	3712327429		107-TF	CARL BRUNECZ #2	SUGAR GROVE	60.0	COLUMBIA GAS TRAN
8208143	8995	3712327430		107-TF	EARNEST HAMILTON #1	SUGAR GROVE	0.0	COLUMBIA GAS TRAN
8208145	8997	3712327425		107-TF	WARREN BARTSCH #1	SUGAR GROVE	60.0	COLUMBIA GAS TRAN
-SHAWNUT DEVELOPMENT CORP				RECEIVED: 11/27/81 JA: PA				
8208148	9804	3700522627		103	SHB-2 LEO ISACCO #1	WILDCAT	3.0	T W PHILLIPS OIL
-4-R INVESTMENT PARTNERSHIP				RECEIVED: 11/27/81 JA: PA				
8208146	9308	3703921221		107-TF	G RENAUD #1	VENANGO	20.0	NATIONAL FUEL GAS
8208147	9309	3703921222		107-TF	G RENAUD #2	VENANGO	20.0	NATIONAL FUEL GAS

OTHER PURCHASERS

8208009 NEW JERSEY NATURAL GAS
8208012 NEW JERSEY NATURAL GAS
8208013 NEW JERSEY NATURAL GAS
8208014 NEW JERSEY NATURAL GAS
8208015 NEW JERSEY NATURAL GAS
8208016 NEW JERSEY NATURAL GAS
8208017 NEW JERSEY NATURAL GAS
8208018 NEW JERSEY NATURAL GAS
8208019 NEW JERSEY NATURAL GAS
8208020 NEW JERSEY NATURAL GAS
8208021 NEW JERSEY NATURAL GAS
8208022 NEW JERSEY NATURAL GAS

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before January 13, 1982.

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.

[FR Doc. 81-36986 Filed 12-28-81; 8:45 am]

BILLING CODE 6717-01-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: December 22, 1981.

JD NO	JA DKT	API NO	D	SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
	OHIO DEPARTMENT OF NATURAL RESOURCES							
-ALLEN M ANDERSON					RECEIVED: 11/30/81 JA: OH			
8208152		3416726487		103	RAYMOND & HATTIE BAILEY #2	WARREN	10.0	
8208153A		3416726804		103	UNGER #1	MUSKINGUM	10.0	
8208153B		3416726804	D	107-TF	UNGER #1	MUSKINGUM	10.0	
-ALTHEIRS OIL INC					RECEIVED: 11/30/81 JA: OH			
8208149		3412725273		103	PETERS #1	SCOTCH HEIGHTS	8.0	NATIONAL GAS & OI
-AMTEX OIL AND GAS INC					RECEIVED: 11/30/81 JA: OH			
8208150		3407522236		107-TF	MARTIN #1 (WILLIAM & ELLEN)	KILLBUCK	250.0	COLUMBIA GAS TRAN
8208151		3407522348		107-TF	MARTIN #2	KILLBUCK	250.0	COLUMBIA GAS TRAN
-BAGLEY LAND IMPROVEMENT INC					RECEIVED: 11/30/81 JA: OH			
8208154		3403520995		103	BAGLEY LAND IMP #2	OLMSTED	2.0	COLUMBIA GAS OF O
-BILL BLAIR INCORPORATED					RECEIVED: 11/30/81 JA: OH			
8208157		3402920823		103	GROVE #4	HOMEWORTH	16.0	EAST OHIO GAS CO
8208157		3402920823		107-TF	GROVE #4	HOMEWORTH	16.0	EAST OHIO GAS CO
8208156		3402920819		103	GROVE #5	HOMEWORTH	12.0	EAST OHIO GAS CO
8208156		3402920819		107-TF	GROVE #5	HOMEWORTH	12.0	EAST OHIO GAS CO
8208158		3402920847		103	SPORTSMAN CLUB #1	HOMEWORTH	20.0	EAST OHIO GAS CO
8208158		3402920847		107-TF	SPORTSMAN CLUB #1	HOMEWORTH	20.0	EAST OHIO GAS CO
-BUCKEYE OIL PRODUCING CO					RECEIVED: 11/30/81 JA: OH			
8208161		3411122179		103	CLARENCE HOWELL #1	MALAGA	7.0	TEXAS EASTERN TRA
8208160		3409921330		107-TF	MILLARD-CRAIG UNIT #1	BERLIN	20.0	COLUMBIA GAS TRAN
-CARL M POSTON					RECEIVED: 11/30/81 JA: OH			
8208321A		3407322521		103	STEPHENS #1	BRENHOLTZ	10.0	
8208321B		3407322521	D	107-TF	STEPHENS #1	BRENHOLTZ	10.0	
-CLARENCE SHERMAN					RECEIVED: 11/30/81 JA: OH			
8208346		3415723574		107-TF	F E & K A HYKES #1	GOSHEN	20.0	
8208345		3405922850		107-TF	MAYOR-KRAMER UNIT #1	LIBERTY	20.0	
8208347		3405922851		107-TF	MAYOR-KRAMER UNIT #2	LIBERTY	20.0	
-CLINTON OIL CO					RECEIVED: 11/30/81 JA: OH			
8208162		3411925374		103	ROBERT L GRANT #1-593	NEWTON	10.0	
8208162		3411925374		107-TF	ROBERT L GRANT #1-593	NEWTON	10.0	
-COLUMBIA GAS TRANSMISSION CORP					RECEIVED: 11/30/81 JA: OH			
8208164		3415521590		107-TF	MICHAEL M KLUPIK 720373	NORTHERN DIST STE OF OHI	52.5	COLUMBIA GAS TRAN
8208163		3415521589		107-TF	MICHAEL M KLUPIK 820295	NORTHERN DIST STE OF OHI	52.5	COLUMBIA GAS TRAN
-CONSOLIDATED RESOURCES OF AMERICA					RECEIVED: 11/30/81 JA: OH			
8208165		3405922849		107-TF	LENA J BARNES #2	CAMBRIDGE	37.0	EAST OHIO GAS CO
-CRYSTAL ENERGY					RECEIVED: 11/30/81 JA: OH			
8208166		3410322268		103	CREEKSIDE DEVELOPING CO #1	BRUNSWICK HILLS	10.0	
8208166		3410322268		107-TF	CREEKSIDE DEVELOPING CO #1	BRUNSWICK HILLS	10.0	
-DERBY OIL & GAS CORP					RECEIVED: 11/30/81 JA: OH			
8208167		3407523312		103	SAMUEL MILLER #1	SALT CREEK	12.0	COLUMBIA GAS TRAN
8208167		3407523312		107-TF	SAMUEL MILLER #1	SALT CREEK	12.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-DORAN & ASSOCIATES INC						RECEIVED: 11/30/81 JA: OH			
8208168		3407522967		103		EMANUEL SCHLABACH #1	SALT CREEK	12.0	COLUMBIA GAS TRAN
8208168		3407522967		107	TF	EMANUEL SCHLABACH #1	SALT CREEK	12.0	COLUMBIA GAS TRAN
8208169		3407523034		103		JACOB HERSHBERGER #1	PAINT	12.0	COLUMBIA GAS TRAN
8208169		3407523034		107	TF	JACOB HERSHBERGER #1	PAINT	12.0	COLUMBIA GAS TRAN
-DORFMAN PRODUCTION CO						RECEIVED: 11/30/81 JA: OH			
8208170		3409921336		103		L MYERS #1	DAMASCUS	12.0	COLUMBIA GAS TRAN
8208170		3409921336		107	TF	L MYERS #1	DAMASCUS	12.0	COLUMBIA GAS TRAN
-ENERGY DEVELOPMENT CORP						RECEIVED: 11/30/81 JA: OH			
8208171		3400721723		103		BRINKER #1	ORWELL	16.0	
8208171		3400721723		107	TF	BRINKER #1	ORWELL	16.0	
8208172		3400721745		103		CHELCIU #2	ROME	18.0	
8208172		3400721745		107	TF	CHELCIU #2	ROME	18.0	
8208173		3416922917		103		JOHN ROBISON #1	PLAIN	12.0	
8208173		3416922917		107	TF	JOHN ROBISON #1	PLAIN	12.0	
-GEO ENERGY INC						RECEIVED: 11/30/81 JA: OH			
8208182		3410322608		103		J & W HUTTINGER UNIT#11-2-1	LIVERPOOL	12.0	COLUMBIA GAS TRAN
8208182		3410322608		107	TF	J & W HUTTINGER UNIT#11-2-1	LIVERPOOL	12.0	COLUMBIA GAS TRAN
-GREEN GAS COMPANY						RECEIVED: 11/30/81 JA: OH			
8208184		3409321145		107	TF	PDK-MCBRIDE #2	COLUMBIA	1.0	COLUMBIA GAS TRAN
8208183		3403521115		107	TF	WYLES-JUSTAVICH UNIT #1	OLMSTEAD	1.0	COLUMBIA GAS OF O
-HOPEWELL OIL AND GAS DEVELOPMENT CO						RECEIVED: 11/30/81 JA: OH			
8208186		3412725178		107	TF	CLYDE AULT #1	PERRY	12.0	COLUMBIA GAS TRAN
8208185		3411925612		107	TF	RAYMOND RUCKER #4	NEWTON	12.0	NATIONAL GAS & OI
8208187		3412725186		107	TF	WILLIAM DURST #1	PLEASANT	12.0	COLUMBIA GAS TRAN
-INTEGRATED PETROLEUM COMPANY INC						RECEIVED: 11/30/81 JA: OH			
8208188		3409921184		103		ROYER #1	ELSWORTH	12.0	
8208188		3409921184		107	TF	ROYER #1	ELSWORTH	12.0	
8208189		3415521918		103		WENGERD #2	MESOPOTAMIA	0.0	
8208189		3415521918		107	TF	WENGERD #2	MESOPOTAMIA	0.0	
-IRVIN PRODUCING COMPANY						RECEIVED: 11/30/81 JA: OH			
8208190		3411522505		103		RICHARD HOUK B-1	DEERFIELD	10.0	COLUMBIA GAS TRAN
8208190		3411522505		107	TF	RICHARD HOUK B-1	DEERFIELD	10.0	COLUMBIA GAS TRAN
-JADOIL INC						RECEIVED: 11/30/81 JA: OH			
8208210		3403124165		107	TF	ALMA CRAIG #2	CLARK	10.0	COLUMBIA GAS TRAN
8208207		3403124006		107	TF	ALVIN & JOANN MEEK #1	CLARK	12.0	COLUMBIA GAS TRAN
8208195		3403123393		107	RT	ALVIN N MILLER #1	CLARK	30.0	COLUMBIA GAS TRAN
8208193		3403123391	D	107	TF	ARCHIE & DONNA WAGERS #1	COSHOCTON	11.0	COLUMBIA GAS TRAN
8208200		3403123707		107	TF	ARCHIE & LOUISE WILLIAMSON #3	CLARK	5.0	COLUMBIA GAS TRAN
8208201		3403123708		107	TF	ARCHIE & LOUISE WILLIAMSON #4	CLARK	5.0	COLUMBIA GAS TRAN
8208206		3403123906		107	TF	ARCHIE & LOUISE WILLIAMSON #5	CLARK	15.0	COLUMBIA GAS TRAN
8208205		3403123747		107	TF	DALE H SCHNABEL #1	BETHLEHEM	30.0	COLUMBIA GAS TRAN
8208194		3401323392		107	TF	E & M LOWE #1	CLARK	8.0	COLUMBIA GAS TRAN
8208203		3403123722		107	TF	E J & C K ZOLLINGER #1	CLARK	16.0	COLUMBIA GAS TRAN
8208198		3403123691		107	TF	GLADYS BUCKLEW #1	COSHOCTON	12.0	COLUMBIA GAS TRAN
8208212		3411925567		107	TF	HAROLD J MADDEN #1	SALEM	30.0	COLUMBIA GAS TRAN
8208202		3403123710	D	107	TF	HENRY E & SHIRLEY GEHRKE #2	JEFFERSON	8.0	COLUMBIA GAS TRAN
8208208		3403124007		107	TF	L & F DOWNES #1	BETHLEHEM	5.0	COLUMBIA GAS TRAN
8208211		3403124225		107	TF	L & N MCVEY #1	CLARK	8.0	COLUMBIA GAS TRAN
8208192		3403123390		107	TF	LAURA & EMMA AMMANN #1	CLARK	4.0	COLUMBIA GAS TRAN
8208196		3403123395		107	TF	LAURA & EMMA AMMANN #2	CLARK	8.0	COLUMBIA GAS TRAN
8208204		3403123724		107	TF	PAUL & JOANNE NEUMAN #2	CLARK	6.0	COLUMBIA GAS TRAN
8208209		3403124011		107	TF	THELMA L SPARKS #1	BETHLEHEM	35.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8208191		3403123376			107-TF	W E & E A WINTERHALTER #1	CLARK	5.0	COLUMBIA GAS TRAN
8208197		3403123600			107-TF	W J & R MCKEE #1	CLARK	15.0	COLUMBIA GAS TRAN
8208199		3403123692			107-TF	WILLARD H CATLIN #1	CLARK	15.0	COLUMBIA GAS TRAN
						RECEIVED: 11/30/81 JA: OH			
-JAMES R SMAIL									
8208348A		3416922840			103	HOMER & ELLA AGEE #1	PLAIN	30.0	COLUMBIA GAS TRAN
8208348B		3416922840	D		107-TF	HOMER & ELLA AGEE #1	PLAIN	30.0	COLUMBIA GAS TRAN
						RECEIVED: 11/30/81 JA: OH			
-JOHN C MASON									
8208236		3407522711			107-TF	CURLEY #1	HARDY	20.0	COLUMBIA GAS TRAN
8208238		3407523373			107-TF	JONAS L M MILLER #1	BERLIN	15.0	COLUMBIA GAS TRAN
8208237		3407523232			107-TF	NOAH SCHLABACH #1	BERLIN	50.0	COLUMBIA GAS TRAN
						RECEIVED: 11/30/81 JA: OH			
-JOHN G FORAKER									
8208175		3400922236			103	CIRCLE J #1	ROME	5.0	COLUMBIA GAS TRAN
8208179		3400922254			103	CIRCLE J #5	ROME	5.0	COLUMBIA GAS TRAN
8208174		3400922080			103	JOHNSON #5	CANAAN	5.0	COLUMBIA GAS TRAN
8208180		3400922325			103	KARUS #1	ROME	0.5	COLUMBIA GAS TRAN
8208178		3400922288			103	KASLER 1-R	ROME	5.0	COLUMBIA GAS TRAN
8208181		3411925782			103	MCLAUGHLIN #1	NEWTON	1.0	NATIONAL GAS & OI
8208176		3400922286			103	STILLWELL #1	CANAAN	5.0	COLUMBIA GAS TRAN
8208177		3400922281			103	STILWELL #2	CANAAN	5.0	COLUMBIA GAS TRAN
						RECEIVED: 11/30/81 JA: OH			
-K S T OIL & GAS CO INC									
8208213		3415521839			103	BREWSTER-WALTON #2	BLOOMFIELD	80.0	
8208213		3415521839			107-TF	BREWSTER-WALTON #2	BLOOMFIELD	80.0	
						RECEIVED: 11/30/81 JA: OH			
-L & M OPERATING INC									
8208214		3412725066			107-TF	LEWIS/JENKINS #2	SALT LICK	10.0	COLUMBIA GAS TRAN
8208215		3412725067			107-TF	LEWIS/JENKINS #3	NEW STRAIGHTSVILLE	10.0	COLUMBIA GAS TRAN
						RECEIVED: 11/30/81 JA: OH			
-L & M PETROLEUM INC									
8208217		3412725299			107-TF	CLAYCRAFT #13	SALT LICK	10.0	COLUMBIA GAS TRAN
8208216		3412724918			103	CLAYCRAFT #14	SALT LICK	9.0	COLUMBIA GAS TRAN
8208216		3412724918			107-TF	CLAYCRAFT #14	SALT LICK	9.0	COLUMBIA GAS TRAN
8208224		3416725014			108	NOLAND/MCCAIN UNIT #1		12.8	COLUMBIA GAS TRAN
8208221		3416724379			108	ROBERT BARTH #2		12.8	COLUMBIA GAS TRAN
8208220		3416724378			108	ROBERT BARTH #3		12.8	COLUMBIA GAS TRAN
8208219		3416724377			108	ROBERT BARTH #4		12.8	COLUMBIA GAS TRAN
8208218		3416724375			108	ROBERT BARTH #6		12.8	COLUMBIA GAS TRAN
8208223		3416724730			108	ROBERT BARTH #7		12.8	COLUMBIA GAS TRAN
8208222		3416724729			108	ROSA WEPPLER #3		12.8	COLUMBIA GAS TRAN
						RECEIVED: 11/30/81 JA: OH			
-LANDPROVEST INC									
8208225		3405922945			107-TF	STOVER #1	VALLEY	30.0	
						RECEIVED: 11/30/81 JA: OH			
-LEADER EQUITIES INC									
8208226		3411522321			103	COTTON #1	MEIGSVILLE	0.0	
8208226		3411522321			107-TF	COTTON #1	MEIGSVILLE	0.0	
8208227		3411522421			103	DANIELSON 1-A	MEIGSVILLE	0.0	
8208227		3411522421			107-TF	DANIELSON 1-A	MEIGSVILLE	0.0	
						RECEIVED: 11/30/81 JA: OH			
-LOMAK PETROLEUM INC									
8208232		3413322618			107-TF	C GANDEE #1	SHALERSVILLE	10.0	PARK OHIO
8208228		3405520321			107-TF	D WHITING #1	BURTON	15.0	EAST OHIO GAS
8208229		3405520325			107-TF	H LUXENBERG #1	BURTON	20.0	EAST OHIO GAS
8208233		3415123108			107-TF	J KETTERER #1	LAKE	15.0	EAST OHIO GAS
8208231		3411924607			107-TF	K ALEXANDER #2	HARRISON	29.0	COLUMBIA GAS TRAN
8208230		3405520327			107-TF	LUXENBURG #3	BURTON	25.0	EAST OHIO GAS
						RECEIVED: 11/30/81 JA: OH			
-M B OPERATING CO INC									
8208234		3415123379			103	KOLP UNIT #4	PERRY	73.0	REPUBLIC STEEL CO
						RECEIVED: 11/30/81 JA: OH			
-MAGNUM PETROLEUM, INC									

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8208235		3410522093		103		RON SMITH #1	SALISBURY	42.0	COLUMBIA GAS TRAN
-NEW FRONTIER EXPLORATION INC				RECEIVED: 11/30/81 JA: OH					
8208239		3415123486		103		KENNETH SMITH #1	OSNABURG	22.0	BARTLO OIL & GAS
-NUCORP ENERGY COMPANY				RECEIVED: 11/30/81 JA: OH					
8208240		3413321951		107-TF		JONES #4	FREEDOM	14.0	ANCHOR HOCKING CO
-OPEX INC				RECEIVED: 11/30/81 JA: OH					
8208241		3400922329		103		WHITE #1	ROME	0.5	COLUMBIA GAS TRAN
-ORION ENERGY CORP				RECEIVED: 11/30/81 JA: OH					
8208242		3411522516		103		RIPPEY UNIT #1	WINDSOR	50.0	
-OXFORD OIL CO				RECEIVED: 11/30/81 JA: OH					
8208243		3411522351		103		EARL APPLEMAN #1	DEERFIELD	12.0	
8208243		3411522351		107-TF		EARL APPLEMAN #1	DEERFIELD	12.0	
8208247		3412724796		103		MARY WILSON #1	CLAYTON	11.0	
8208247		3412724796		107-TF		MARY WILSON #1	CLAYTON	11.0	
8208245		3411925792		103		PAUL NORRIS #2	PERRY	12.0	
8208245		3411925792		107-TF		PAUL NORRIS #2	PERRY	12.0	
8208244		3411925669		103		ROWENA FRAUNFELTER #3	NEWTON	10.0	
8208244		3411925669		107-TF		ROWENA FRAUNFELTER #3	NEWTON	10.0	
8208246		3411925896		103		VIRGIL MILLER #1	PERRY	11.0	
8208246		3411925896		107-TF		VIRGIL MILLER #1	PERRY	11.0	
-PAROCO DRLG FUNDS INC				RECEIVED: 11/30/81 JA: OH					
8208317		3415521953		103		WILLIAMS #1	BRISTOL	20.0	
8208317		3415521953		107-TF		WILLIAMS #1	BRISTOL	20.0	
-PETROLEUM SECURITIES FUND - 80				RECEIVED: 11/30/81 JA: OH					
8208319		3407322432		103		ENDERLE #2	WASHINGTON	129.0	
8208318		3407322430		103		ENDERLE #5	WASHINGTON	28.0	
8208320		3407322447		103		ENDERLE #6	WASHINGTON	29.0	
-POI ENERGY INC				RECEIVED: 11/30/81 JA: OH					
8208284		3400721356		107-TF		BROKEN WHEEL #1	COLEBROOK	15.0	
8208285		3400721357		107-TF		BROKEN WHEEL #2	COLEBROOK	15.0	
8208277		3400721314		107-TF		CARR-DROWN #1	ROME	20.0	
8208283		3400721346		107-TF		CORRIGAN #1	ROME	45.0	
8208306		3400721512		107-TF		E SIGAL #1	ROME	35.0	EAST OHIO GAS CO
8208311		3400721552		107-TF		E SIGAL #2	ROME	35.0	EAST OHIO GAS CO
8208252		3400721097		107-RT		EASTON #1	EASTON	30.0	
8208250		3400721092		107-RT		EASTON BROTHERS #1	COLEBROOK	15.0	
8208315		3413321820	D	107-TF		ENGLISH #2A	SHALERSVILLE	20.0	
8208297		3400721429		107-TF		EWASKA #1	COLEBROOK	30.0	EAST OHIO GAS CO
8208272		3400721296		107-TF		GAAG #1	COLEBROOK	10.0	
8208298		3400721433		107-TF		GOGAN #1	COLEBROOK	30.0	EAST OHIO GAS CO
8208259		3400721203		107-TF		H KAMPF #1	ROME	30.0	
8208316		3413321914		107-TF		HACH #2	AURORA	10.0	
8208249		3400721083		107-TF		HANSAR #3	NEW LYME	50.0	
8208313		3400721651		107-TF		HELINSKI #3	COLEBROOK	55.0	EAST OHIO GAS CO
8208251		3400721094		107-TF		HOFFSTETTER #1	COLEBROOK	10.0	
8208288		3400721384		107-TF		HUBBELL #1	ROME	20.0	
8208295		3400721419		107-TF		HUBBELL #2	ROME	20.0	
8208258		3400721201		107-TF		KAMPF #2	ROME	35.0	
8208263		3400721232		107-TF		KAMPF #4	ROME	35.0	
8208301		3400721451		107-TF		KLEIN #1	ROME	22.0	
8208303		3400721467		107-TF		KLEIN #2	ROME	22.0	
8208309		3400721522		107-TF		L BEAN #1	HARTSGROVE	30.0	EAST OHIO GAS CO
8208281		3400721331		107-TF		LAKE CARDINAL #2	ROME	25.0	

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8208289		3400721391		107	TF	LAMBERT #1	ROME	35.0	
8208273		3400721297		107	TF	MARKELL #1	COLEBROOK	20.0	
8208308		3400721518		107	TF	MATISH-SATTERFIELD #1	ROME	25.0	
8208267		3400721253		107	TF	MCNISH #1	COLEBROOK	15.0	
8208261		3400721227		107	TF	MCNISH #2	COLEBROOK	15.0	
8208302		3400721452		107	TF	MECKLEY-SIRRINE #1	ROME	30.0	
8208312		3400721561		107	TF	MECKLEY-SIRRINE #2	ROME	50.0	EAST OHIO GAS CO
8208275		3400721311		107	TF	MIKOS #1	ROME	75.0	
8208253		3400721100		107	TF	NITA #1	COLEBROOK	15.0	
8208248		3400720555		107	TF	ORAVETZ #1	HARTSGROVE	15.0	
8208292		3400721400		107	TF	PAE #1	ROME	50.0	EAST OHIO GAS CO
8208274		3400721298		107	TF	PAROBEK #1	NEW LYME	5.0	
8208290		3400721397		107	TF	PECK #1	NEW LYME	50.0	
8208307		3400721517		107	TF	PHILLIPPI #1	ORWELL	15.0	EAST OHIO GAS CO
8208262		3400721231		107	TF	R KAMPF #1	ROME	40.0	
8208299		3400721447		107	TF	RIGBY #1	ORWELL	12.0	
8208293		3400721401		107	TF	ROTH-JEFFERSON #1	COLEBROOK	30.0	EAST OHIO GAS CO
8208294		3400721402		107	TF	ROTH-JEFFERSON #2	COLEBROOK	30.0	EAST OHIO GAS CO
8208266		3400721251		107	TF	SAWICKI #1	COLEBROOK	15.0	
8208265		3400721245		107	TF	SMEARSOLL #1	COLEBROOK	15.0	
8208300		3400721448		107	TF	SMEARSOLL #2	COLEBROOK	15.0	
8208276		3400721313		107	TF	SMITH #1	COLEBROOK	15.0	
8208304		3400721470		107	TF	SOLOWEYKO #1	HARTSGROVE	18.0	
8208305		3400721471		107	TF	SOLOWEYKO #2	HARTSGROVE	14.0	
8208291		3400721398		107	TF	STOKES #1	NEW LYME	25.0	
8208287		3400721383		107	TF	STOKES #2	NEW LYME	25.0	
8208278		3400721325		107	TF	STRINGFELLOW #1	NEW LYME	25.0	
8208279		3400721326		107	TF	STRINGFELLOW #2	NEW LYME	40.0	
8208280		3400721327		107	TF	STRINGFELLOW #3	NEW LYME	40.0	
8208282		3400721332		107	TF	STRINGFELLOW #6	NEW LYME	40.0	
8208286		3400721380		107	TF	STRINGFELLOW #7	NEW LYME	35.0	
8208269		3400721276		107	TF	STRINGFELLOW #8	NEW LYME	50.0	
8208310		3400721540		107	TF	STRINGFELLOW #9	NEW LYME	14.0	
8208264		3400721235		107	TF	SWENTON #1	COLEBROOK	45.0	
8208256		3400721194		107	TF	SYLVESTER #1	ROME	25.0	
8208257		3400721195		107	TF	SYLVESTER #2	ROME	25.0	
8208270		3400721278		107	TF	WINS #1	COLEBROOK	15.0	
8208260		3400721213		107	TF	WHITELY #1	NEW LYME	50.0	
8208314		3400721985		107	TF	WOOLEY #1	ROME	25.0	
8208255		3400721156		107	TF	WYNN #1	ROME	30.0	
8208271		3400721287		107	TF	WYNN #4	NEW LYME	30.0	
8208254		3400721103		107	TF	YUHASZ #2	COLEBROOK	15.0	
8208268		3400721270		107	TF	YUHASZ #3	COLEBROOK	12.0	
8208296		3400721426		107	TF	YUHASZ #4	COLEBROOK	10.0	
-PYRAMID OIL & GAS COMPANY				RECEIVED: 11/30/81		JA: OH			
8208322		3415521226		103		STUCZYNSKI #1	SOUTHINGTON	15.0	
-QUAKER STATE OIL REFINING CORP				RECEIVED: 11/30/81		JA: OH			
8208324		3400922283		103		R M JONES #2	TRIMBLE	36.5	COLUMBIA GAS TRAN
8208324		3400922283		107	TF	R M JONES #2	TRIMBLE	36.5	COLUMBIA GAS TRAN
8208325		3400922284		103		R M JONES #3	TRIMBLE	36.5	COLUMBIA GAS TRAN
8208325		3400922284		107	TF	R M JONES #3	TRIMBLE	36.5	COLUMBIA GAS TRAN
8208326		3400922285		103		R M JONES #4	TRIMBLE	36.5	COLUMBIA GAS TRAN
8208326		3400922285		107	TF	R M JONES #4	TRIMBLE	36.5	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8208323		3400922263		103	R M JONES #5	TRIMBLE	36.5	COLUMBIA GAS TRAN
8208323		3400922263		107-TF	R M JONES #5	TRIMBLE	36.5	COLUMBIA GAS TRAN
-RESOURCE EXPLORATION INC				RECEIVED: 11/30/81 JA: OH				
8208327		3406720404		103	D MEYERS #1	WASHINGTON TOWNSHIP	20.0	COLUMBIA GAS TRAN
8208327		3406720404		107-TF	D MEYERS #1	WASHINGTON TOWNSHIP	20.0	COLUMBIA GAS TRAN
8208329		3406720409		107-TF	J STULL #1	WASHINGTON TOWNSHIP	20.0	COLUMBIA GAS TRAN
8208328		3406720405		107-TF	KENNETH G MAROSELL #1	WASHINGTON TOWNSHIP	20.0	COLUMBIA GAS TRAN
-RICHARD BOUMAN & WILLIAM RUSNIK				RECEIVED: 11/30/81 JA: OH				
*8208159		3410322596		103	WILLIAM RUSNIK #3	SHARON	30.0	COLUMBIA GAS TRAN
*8208159		3410322596		107-TF	WILLIAM RUSNIK #3	SHARON	30.0	COLUMBIA GAS TRAN
-RIMCO OPERATING INC				RECEIVED: 11/30/81 JA: OH				
8208333		3416922564		103	AMOS #1	CLINTON	12.0	COLUMBIA GAS TRAN
8208333		3416922564		107-TF	AMOS #1	CLINTON	12.0	COLUMBIA GAS TRAN
8208341		3416922843		103	AMSTUTZ #1	CHESTER	12.0	COLUMBIA GAS TRAN
8208341		3416922843		107-TF	AMSTUTZ #1	CHESTER	12.0	COLUMBIA GAS TRAN
8208342		3416922844		103	AMSTUTZ #2	CHESTER	12.0	COLUMBIA GAS TRAN
8208342		3416922844		107-TF	AMSTUTZ #2	CHESTER	12.0	COLUMBIA GAS TRAN
8208331		3416922534		103	BECKER #1	PLAIN	12.0	COLUMBIA GAS TRAN
8208331		3416922534		107-TF	BECKER #1	PLAIN	12.0	COLUMBIA GAS TRAN
8208338		3416922748		103	CRUMLEY #1	CONGRESS	12.0	COLUMBIA GAS TRAN
8208338		3416922748		107-TF	CRUMLEY #1	CONGRESS	12.0	COLUMBIA GAS TRAN
8208339		3416922749		103	CRUMLEY #2	CONGRESS	12.0	COLUMBIA GAS TRAN
8208339		3416922749		107-TF	CRUMLEY #2	CONGRESS	12.0	COLUMBIA GAS TRAN
8208343		3416922848		103	GOOD #1	CHESTER	12.0	COLUMBIA GAS TRAN
8208343	—	3416922848		107-TF	GOOD #1	CHESTER	12.0	COLUMBIA GAS TRAN
8208330		3416922525		103	JONES #2	CONGRESS	12.0	COLUMBIA GAS TRAN
8208330		3416922525		107-TF	JONES #2	CONGRESS	12.0	COLUMBIA GAS TRAN
8208340		3416922767		103	KINNEY #1	CHESTER	12.0	COLUMBIA GAS TRAN
8208340		3416922767		107-TF	KINNEY #1	CHESTER	12.0	COLUMBIA GAS TRAN
8208336		3416922609		103	L SIGLER #1	CHESTER	12.0	COLUMBIA GAS TRAN
8208336		3416922609		107-TF	L SIGLER #1	CHESTER	12.0	COLUMBIA GAS TRAN
8208334		3416922601		103	R MARTIN #4	CHESTER	12.0	COLUMBIA GAS TRAN
8208334		3416922601		107-TF	R MARTIN #4	CHESTER	12.0	COLUMBIA GAS TRAN
8208335		3416922605		103	RICHARDS #7	CHESTER	12.0	COLUMBIA GAS TRAN
8208335		3416922605		107-TF	RICHARDS #7	CHESTER	12.0	COLUMBIA GAS TRAN
8208337		3416922671		103	SARGEANT #1	CONGRESS	12.0	COLUMBIA GAS TRAN
8208337		3416922671		107-TF	SARGEANT #1	CONGRESS	12.0	COLUMBIA GAS TRAN
8208332		3416922535		103	YEAGLEY #1	CHESTER	12.0	COLUMBIA GAS TRAN
8208332		3416922535		107-TF	YEAGLEY #1	CHESTER	12.0	COLUMBIA GAS TRAN
-SECURITY GAS & OIL INC				RECEIVED: 11/30/81 JA: OH				
8208344		3416723696		108	C F GRIFFITHS #2 PERMIT #3696	CHURCHTOWN	0.9	COLUMBIA GAS TRAN
-SUPERIOR PETROLEUM INC				RECEIVED: 11/30/81 JA: OH				
8208349		3401320370	D	107-TF	DAVIS #1	WAYNE	0.0	TEXAS EASTERN TRA
8208350		3409921386		103	MERCER #1	GOSHEN	0.0	EAST OHIO GAS CO
8208350		3409921386		107-TF	MERCER #1	GOSHEN	0.0	EAST OHIO GAS CO
8208351		3409921387		103	MERCER #2	GOSHEN	0.0	EAST OHIO GAS CO
8208351		3409921387		107-TF	MERCER #2	GOSHEN	0.0	EAST OHIO GAS CO
-TEXACAN ENERGY INC				RECEIVED: 11/30/81 JA: OH				
8208352		3407523100		103	ANDY Y MILLER #1	BERLIN	12.0	COLUMBIA GAS TRAN
8208352		3407523100		107-TF	ANDY Y MILLER #1	BERLIN	12.0	COLUMBIA GAS TRAN
8208353		3407523118		103	LEVI A RABER #1	BERLIN	12.0	COLUMBIA GAS TRAN
8208353		3407523118		107-TF	LEVI A RABER #1	BERLIN	12.0	COLUMBIA GAS TRAN
-THE BENATTY CORPORATION				RECEIVED: 11/30/81 JA: OH				

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JO NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8208155		3405922936		103		N TOSTENSON #1	CAMBRIDGE	35.0	COLUMBIA GAS TRAN
8208155		3405922936		107	-TF	N TOSTENSON #1	CAMBRIDGE	35.0	COLUMBIA GAS TRAN
-TITAN ENERGY CORP				RECEIVED: 11/30/81 JA: OH					
8208354		3405923001		103		MYRA ROSS #1-A	CAMBRIDGE	20.0	COLUMBIA GAS TRAN
8208354		3405923001		107	-TF	MYRA ROSS #1-A	CAMBRIDGE	20.0	COLUMBIA GAS TRAN
-TRUMBULL RESOURCES				RECEIVED: 11/30/81 JA: OH					
8208355		3415521923		103		SIMON #1	VIENNA	25.0	
-VIKING RESOURCES CORP				RECEIVED: 11/30/81 JA: OH					
8208360		3415123504		103		AIR-BRASIVE CO #1	WASHINGTON	30.0	
8208360		3415123504		107	-TF	AIR-BRASIVE CO #1	WASHINGTON	30.0	
8208362		3415123576		103		BAUMBERGER #1	PARIS	30.0	
8208362		3415123576		107	-TF	BAUMBERGER #1	PARIS	30.0	
8208358		3409921408		103		F C F REALTY CO UNIT #2	BERLIN	30.0	
8208358		3409921408		107	-TF	F C F REALTY CO UNIT #2	BERLIN	30.0	
8208359		3409921409		103		F C F REALTY CO UNIT #3	BERLIN	30.0	
8208359		3409921409		107	-TF	F C F REALTY CO UNIT #3	BERLIN	30.0	
8208361		3415123575		103		HODEL-SLACK UNIT #1	PARIS	30.0	
8208361		3415123575		107	-TF	HODEL-SLACK UNIT #1	PARIS	30.0	
8208365		3415123596		103		KANNEY-FORESTER UNIT #1	PARIS	30.0	
8208365		3415123596		107	-TF	KANNEY-FORESTER UNIT #1	PARIS	30.0	
8208363		3415123589		103		STILLION UNIT #1	OSNABURG	30.0	
8208363		3415123589		107	-TF	STILLION UNIT #1	OSNABURG	30.0	
8208364		3415123590		103		STILLION UNIT #2	OSNABURG	30.0	
8208364		3415123590		107	-TF	STILLION UNIT #2	OSNABURG	30.0	
8208356		3409921380		103		TOKICH #2	BERLIN	30.0	
8208356		3409921380		107	-TF	TOKICH #2	BERLIN	30.0	
8208357		3409921381		103		TOKICH #3	BERLIN	30.0	
8208357		3409921381		107	-TF	TOKICH #3	BERLIN	30.0	
-WILLISTON OIL CORP				RECEIVED: 11/30/81 JA: OH					
8208368		3416726517		103		WEST/USA #1	INDEPENDENCE	100.0	
8208369		3416726611		103		YESTER /USA #2	INDEPENDENCE	100.0	
-WM OIL & GAS CO				RECEIVED: 11/30/81 JA: OH					
8208366		3415123606		103		WETTER #1	WETTER #1	1.0	EAST OHIO GAS CO
-WOA INC & MELLENCO INC				RECEIVED: 11/30/81 JA: OH					
8208367		3410322369		103		SMITH #2	GRANGER	20.0	
8208367		3410322369		107	-TF	SMITH #2	GRANGER	20.0	
-WRAY PETROLEUM CORP OF OHIO				RECEIVED: 11/30/81 JA: OH					
8208370		3413322484		103		MORAN VANCURA #2	NELSON TOWNSHIP	18.0	EAST OHIO GAS CO
8208370		3413322484		107	-TF	MORAN VANCURA #2	NELSON TOWNSHIP	18.0	EAST OHIO GAS CO

OTHER PURCHASERS

8208159 EAST OHIO GAS CO

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-38987 Filed 12-28-81; 8:45 am]
BILLING CODE 6717-01-C

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of November 9 Through November 13, 1981

During the week of November 9 through November 13, 1981, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals. 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 B-1200, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 22, 1981.

Appeals

Herrick & Smith, 11-12-81, HFA-0002

The law firm of Herrick & Smith filed an Appeal from a partial denial by the Acting General Counsel for Interpretations and Rulings of the DOE of a request for information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE upheld the Acting General Counsel's decision to withhold certain documents pursuant to Exemption 5. The DOE also held that Exemption 5 need not be claimed by the head of the agency, and that the documents are not automatically releasable by virtue of the fact that they are several years old and relate to a regulatory program that has been terminated. The Appeal was therefore denied.

The Procter & Gamble Paper Products Company, 11-9-81, BEA-0678

The Procter & Gamble Paper Products Company filed an Appeal from a decision in which the Economic Regulatory Administration denied the firm's certification that it processed "municipal solid waste" and was eligible, therefore, to receive entitlements benefits pursuant to 10 CFR 211.67(a)(5)(i)(D). In considering the Appeal, the DOE found that the waste processed by Procter & Gamble was not "municipal solid waste" within the meaning of Section 211.67(a)(5)(i)(D). Accordingly, the Appeal was denied.

Texas American Petrochemicals, Inc., 11-12-81, HFA-0003

Texas American Petrochemcials, Inc., filed an Appeal from a denial by the Director of the Special Investigations Division of the Office of General Counsel (Director) of a request for information which the firm had submitted under the Freedom of Information Act (FOIA). The firm had sought all audit materials and workpapers used by the Economic Regulatory Administration (ERA) in its decision to issue the firm a Notice of Probable Violation. In considering the Appeal, the DOE determined that the Director properly withheld the responsive documents from disclosure pursuant to Exemption 7(A) of the FOIA. The DOE found that the firm's status as a party litigant to the enforcement proceeding did not compel the release of the documents and that the release of the documents would interfere with enforcement efforts by affording Texas American greater and earlier access to the ERA's case than it would otherwise have. The DOE also found that the material withheld did not contain any non-exempt documents and that the Director sufficiently indexed the documents withheld through a generic index. The Appeal was therefore denied.

Request for Exception

Copano Refining Co., 11-13-81, BEE-1249

Copano Refining Company filed an Application for Exception from the provisions of 10 CFR 211.65 in which the firm sought to participate in the crude oil Buy-Sell Program as a refiner-buyer. In considering the request, the DOE found that the firm had failed to demonstrate the existence of a causal relationship between its alleged difficulties and the DOE regulatory provisions from which it sought relief. Accordingly, exception relief was denied.

Request for Stay

Placid Refining Co., 11-10-81, BES-0174

Placid Refining Company filed an Application for Stay from the firm's entitlements purchase obligation for its January 1981 crude oil receipts and runs to stills (10 CFR 211.67). In considering the Application, the DOE determined that Placid would not suffer an irreparable injury or serious financial hardship in the absence of a stay and that there was not a strong likelihood that the firm would succeed on the merits of the various exception applications involved. Placid's stay request was therefore denied.

Interlocutory Order

Office of Special Counsel, 11-9-81, HRZ-0003, HRZ-0001

The Office of Special Counsel filed a motion to strike from the record two submissions filed by Texaco Inc. in connection with a compliance proceeding pending before the Office of Hearings and Appeals. The OHA reiterated its prior position that motions to strike would be granted only upon a showing of prejudice resulting from the retention of materials in the record. OHA held that where the very filing of a submission violates the terms of a prior OHA order, prejudice will be presumed and granted the OSC motion in part.

Supplemental Order

Emond Oil Company, 11-10-81, BCX-0227, H7955.

The United States District Court for the District of Rhode Island entered a judgment setting aside a March 16, 1977 Decision and Order which the Office of Hearings and Appeals (OHA) issued to Emond Oil Company (Emond). *Emond Oil Corp. v. Schlesinger*, C.A. No. 77-0191 (D.R.I. July 31, 1981). The March 16, 1977 OHA Decision denied Emond's Appeal of a September 27, 1976 Remedial Order issued to the firm by Region I of the Federal Energy Administration. *Emond Oil Co.*, 5 FEA ¶ 80,574 (1977). In its order, the district court directed the OHA to provide Emond with a further opportunity for a hearing for the purpose of oral argument concerning its Appeal. Accordingly, the OHA issued a Supplemental Order rescinding the March 16, 1977 Decision and Order.

DISMISSALS

The following submissions were dismissed without prejudice:

Name and Case No.
Exxon Corporation, BRO-1461
Ron Lawson d/b/a Ron & Joe's "Z" Service, BRO-1451
Southern Bell Telephone & Telegraph Company, DEE-8328

[FR Doc. 81-37052 Filed 12-28-81; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of November 23 Through December 4, 1981

During the period of November 23 through December 4, 1981, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or

law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 22, 1981.

McDonald Oil Company, Fort Edward, New York, BEE-1678, No. 2 heating oil.

McDonald Oil Company filed and Application for Exception from the reporting requirements of Form EIA-9A. The exception request, if granted, would relieve McDonald of its obligation to file Form EIA-9A. On December 2, 1981, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 81-37053 Filed 12-28-81; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Order Confirming and Approving Substitute Power Rates on an Interim Basis

AGENCY: Southeastern Power Administration (SEPA), DOE.

ACTION: Notice of confirmation and approval on interim basis of replacement rate schedule applicable to a portion of the power sold from Georgia-Alabama system of projects.

SUMMARY: On December 18, 1981, the Assistant Secretary for Conservation and Renewable Energy confirmed and approved, on an interim basis, replacement Rate Schedule CAR-1-C applicable to power sold in the Duke Power Company service area from SEPA's Georgia-Alabama System of Projects. The rates are interimly approved for a one-year period and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on interim basis is effective concurrent with the effective date of Duke Power Company's wheeling charge to SEPA.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Chief, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635

John J. DiNucci, Office of Power Marketing Coordination, Department of Energy, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued April 3, 1981, in Docket No. EF79-3011, confirmed and approved existing rates for the Georgia-Alabama System of Projects including Rate Schedules CAR-1-B and CAR-2-B applicable to Duke Power Company service area for a period ending September 30, 1983. Rate Schedule CAR-1-C replaces CAR-1-B and Rate Schedule CAR-2-B is eliminated.

Issued in Washington, D.C., December 18, 1981.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

United States of America, Department of Energy, Assistant Secretary for Conservation and Renewable Energy

In the Matter of: Southeastern Power Administration—Georgia-Alabama System of Projects' Power Rates, Rate Order No. SEPA-12

Order Confirming and Approving Substitute Power Rates on an Interim Basis (December 18, 1981)

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204-33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. This rate order is issued pursuant to the delegation to the Assistant Secretary for Conservation and Renewable Energy.

Background

New Contractual Arrangement

Power from the Georgia-Alabama System of Projects is presently sold under several Wholesale Power Rate Schedules including Schedules CAR-1-B and CAR-2-B applicable to power sold to preference customers within the Duke Power Company (Duke) service area and to the Company. These system rates were confirmed and approved by the Federal Energy Regulatory Commission on April 3, 1981, for a period ending September 30, 1983. Anticipating the expiration of its current contract with Duke and to begin the implementation of new written power marketing policy for its Georgia-Alabama System, SEPA has negotiated a new contract with Duke whereby the Company agrees for a stated wheeling fee to transmit for the account of the Government to preference customers all peaking power available to the Duke system area after provision for capacity reserves and transmission losses. Under the contract, Duke will no longer purchase power from SEPA. Contracts consistent with the SEPA-Duke contract are being negotiated by SEPA with each preference customer. The SEPA-Duke contract and the SEPA preference customer contracts will become effective concurrent with the date FERC approves and/or accepts for filing the Duke wheeling charge to SEPA. SEPA proposes to eliminate the existing rate schedules applicable to the sale of power to preference customers and to Duke and to substitute a single rate schedule applicable only to the preference customers.

Public Notice and Comment

SEPA prepared a Repayment Study, dated September 1981, for the Georgia-Alabama Projects which shows that, apart from the impact of the new SEPA-Duke contract, revenues at current rates were adequate to meet repayment criteria for the period covered by the present FERC approval. To reflect the impact of the new contract, a replacement schedule was developed designated Rate Schedule CAR-1-C, through which resulting additional contract costs would be passed directly through to affected customers as a part of the capacity charge for power sold under such schedule.

Opportunities for public review and comment on the proposed Rate Schedule CAR-1-C and supporting documents were announced by Notice published in the **Federal Register** of August 24, 1981, 46 FR 42748, and all affected SEPA customers were notified by mail. Pursuant to the Notice a public information and comment forum was held in Spartanburg, South Carolina, on September 24, 1981, and written comments were solicited through October 9, 1981. No comments were received. A transcript of the public forum was made.

Discussion

System Repayment

SEPA's September 1981 system Repayment Study is basically an update of its 1979 Repayment Study, upon which existing rates are predicated. While the cost estimates used in the 1981 Study are slightly higher than the estimates included in the 1979 Study, nevertheless, the 1981 Repayment Study continues to show that the revenues at present rate levels are adequate, apart from the impact of the new SEPA-Duke contract, to recover all costs within the repayment criteria. To recover the additional costs resulting from the new SEPA-Duke contract, Rate Schedule CAR-1-C has been designed as a replacement schedule to provide

revenues equivalent to the revenues currently received under existing Rate Schedules CAR-1-B and CAR-2-B applicable to the Duke area preference customers and the Company plus the additional wheeling charge under the new contract payable to Duke.

Rate Design

Proposed Rate Schedule CAR-1-C is identical to existing Rate Schedule CAR-1-B except that the capacity charge is increased from $1.02 to $2.51 per kilowatt per month of contract demand. $0.23 of the increased charge is required because the new contract provides for the sale of 118,500 kilowatts of net assured capacity to preference customers while the contract being replaced provided for the sale of 145,000 kilowatts of dependable capacity to the preference customers (61,500 kW) and Duke (83,500 kW). The additional revenues required which amount to $1,794,000 per year result from wheeling the total power to the preference customers at transmission costs derived from costs of service studies. This accounts for the remaining $1.26 per kilowatt per month charge for a total of $2.51. Since no sales to the Company are made under the new SEPA-Duke contract, Rate Schedule CAR-2-B now applicable to Duke is eliminated as is Rate Schedule CAR-1-B now applicable to preference customers in the Duke area.

Environmental Impact

SEPA has reviewed the possible environmental impacts of the rate adjustments under consideration and has concluded that because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement or an Environmental Assessment is required.

Availability of Information

Information regarding these rates including studies, public information and comment forum transcript, and other supporting material are available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Office of the Director of Power Marketing Coordination, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Submission to the Federal Energy Regulatory Commission

The rates herein confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period ending no later than September 30, 1983.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, to become effective concurrent with the effective date of the Duke wheeling charge to Southeastern, attached Wholesale Power Rate Schedule CAR-1-C. The Rate Schedule shall remain in effect on an interim basis for a one-year period unless such period is extended or until the FERC confirms and approves Rate Schedule CAR-1-C or a substitute rate schedule on a final basis, whichever occurs first. Subject to final action by FERC, Rate Schedules CAR-1-B and CAR-2-B will terminate on the effective date of Rate Schedule CAR-1-C.

Issued at Washington, D.C., this 18th day of December 1981.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

United States Department of Energy, Southeastern Power Administration

Wholesale Power Rate Schedule CAR-1-C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be wheeled pursuant to contract between the Duke Power Company (hereinafter called the Company) and the Government.

Applicability: This rate schedule shall be applicable to power and accompanying energy generated at the Hartwell and Clarks Hill Projects (hereinafter called the Projects) and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.51 per kilowatt of total contract demand.

Energy Charge: 3.65 mills per kilowatt-hour.

Energy to be Furnished by the Government: The Government will sell to the customer and the customer will purchase from the Government a portion of the energy available to the Company area from the Projects in any billing month determined by multiplying the total energy available less six and one-half percent losses by the ratio of the customer's contract demand to the sum of the contract demands of all customers served under this rate schedule.

Billing Month: The billing month for power sold under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

Conditions of Service: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

[FR Doc. 81-37056 Filed 12-24-81; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Colorado River Storage Project, Order Confirming and Approving an Extension of Power Rates on an Interim Basis

AGENCY: Western Area Power Administration, Energy.

ACTION: Notice of an extension of power rates on an interim basis—Colorado River Storage Project.

SUMMARY: Notice is given of Rate Order No. WAPA-7 of the Assistant Secretary for Conservation and Renewable Energy extending wholesale power rates on an interim basis for power marketed by the Western Area Power Administration (Western) from the Colorado River Storage Project, Colorado, New Mexico, Utah, and Wyoming.

ADDRESS: For further information contact:

Mr. Albert M. Gabiola, Area Manager, Salt Lake City Area Office, Western Area Power Administration, Department of Energy, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524-5493.

Mr. Conrad Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231-1535.

Mr. Janes A. Braxdale, Office of Power Marketing Coordination, CE-90, Department of Energy, Mail Code 3353, Federal Building, Washington, DC 20461, (202) 633-8338.

SUPPLEMENTARY INFORMATION: By Delegation Order No 0204-33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, delegation Order No. 0244-33 was amended, effective March 19, 1981 (46 FR 25426, May 7, 1981), to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy.

Pursuant to the delegation order, the Assistant Secretary for Resource Applications issued on December 23, 1980, Rate Order No. WAPA-4 (45 FR 86988, December 31, 1980), which

confirmed and approved on an interim basis, Rate Schedules SP-F1 and SP-FP1 for wholesale power marketed by Western from the Colorado River Storage Project. The rates became effective the first day of the first full billing period beginning on or after January 23, 1981, and were to remain in effect for a period of 12 months unless the period was extended or until the FERC confirmed and approved them, or substitute rates, on a final basis. The rates were submitted to the FERC for confirmation and approval on a final basis on December 23, 1980.

The FERC has not yet acted on the rates. The purpose of Rate Order No. WAPA-7 is to extend the power rates pending the FERC confirmation and approval of them, or substitute rates, on a final basis, or until they are superseded.

Issued in Washington, D.C., December 18, 1981.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

United States of America, Department of Energy, Assistant Secretary for Conservation and Renewable Energy

In the Matter of: Western Area Power Administration—Colorado River Storage Project Power Rates, Rate Order No. WAPA-7

Order Confirming and Approving an Extension of Power Rates on an Interim Basis (December 18, 1981)

Pursuant to section 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Colorado River Storage Project, for the Bureau of Reclamation were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0244-33 was amended, effective March 19, 1981 (46 FR 25426, May 7, 1981), to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. This rate order is issued pursuant to the delegation to the Assistant Secretary for Conservation and Renewable Energy.

Background

Pursuant to Delegation Order No. 0204-33, the Assistant Secretary for Resource Applications issued Rate Order No. WAPA-4 on December 23, 1980 (45 FR 86988, December 31, 1980), which confirmed and approved on an interim basis, Rate Schedules SP-F1 and SP-FP1 for wholesale power marketed by the Western Area Power Administration's Colorado River Storage Project. These rates became effective the first day of the first full billing period beginning on or after January 23, 1981. The rate order stated that the rates "* * * shall remain in effect on an interim basis for a period of 12 months unless such period is extended, or until the FERC confirms and approves these or substitute rates, on a final basis, whichever occurs first." The rate schedules were submitted to the FERC for confirmation and approval on a final basis by the Assistant Secretary for Resource Applications' letter of December 23, 1980.

Discussion

Inasmuch as the FERC is not expected to complete its confirmation and approval of the Colorado River Storage Project power rates by January 23, 1982, a further extension of the interim rates is necessary.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective the first day of the first full billing period beginning on or after January 23, 1982, an extension of existing Rate Schedules SP-F1 and SP-FP1. These rates shall remain in effect pending the FERC confirmation and approval of them, or substitute rates, on a final basis, or until they are superseded.

Issued in Washington, D.C., December 18, 1981.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

Rate Schedule SP-F1 (Supersedes Schedule UC-F2)

United States Department of Energy, Western Area Power Administration

Colorado River Storage Project, Schedule of Rates for Wholesale Firm Power Service

Effective: The first day of the first full billing period beginning on or after January 23, 1981.

Available: In the area served by the Colorado River Storage Project.

Applicable: To wholesale power customers for general power service supplied through one meter at one point of delivery.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate:

Capacity charge: $1.655/kW of billing demand.

Energy charge: 4.0 mills/kWh for all energy use up to, but not in excess of, the energy obligation under the power sales contract.

Billing demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at ten (10) times the above rate.

Adjustments

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

Rate Schedule SP-FP1 (Supersedes Schedule UC-FP2)

United States Department of Energy, Western Area Power Administration

Colorado River Storage Project, Schedule of Rates for Wholesale Peaking Power Service

Effective: The first full day of the first full billing period beginning on or after January 23, 1981.

Available: Within and adjacent to the marketing area of the Colorado River Storage Project.

Applicable: To wholesale power customers purchasing such service under long-term contracts. Because of the nature of this class of service, it is applicable only to customers with other resources enabling them to utilize it.

Character and Conditions of Service: As specifically established by contract. Delivery will be made from the transmission system of the United States at transmission voltage, and normally only during peak hours of the purchaser's load. Return of all energy furnished shall normally be required.

Monthly Rate:

Capacity charge: $1.655/kW of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is the greater.

Energy charge: 4.0 mills/kWh for all energy scheduled for delivery without return.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at ten (10) times the above rate.

Adjustments:

For power factor: None. The customer will normally be required to maintain a power

factor at the point of delivery of between 95 percent lagging and 95 percent leading.

[FR Doc. 81-37055 Filed 12-24-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects; Public Comment Forum

AGENCY: Western Area Power Administration, DOE.

ACTION: Announcement of public comment forum to gather public comments concerning the proposed general consolidated power marketing criteria or regulations for the Boulder City area projects.

SUMMARY: The Western Area Power Administration (Western) has scheduled a public comment forum, which will not be adjudicatory in nature, to gather public comments concerning the Proposed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Proposed Criteria) which was published in the **Federal Register** on September 22, 1981, at 46 FR 46864.

DATES: The public comment forum (Forum) will be held on January 21, 1982, at 9:00 a.m. at the Showboat Hotel (Natchez Room) in Las Vegas, Nevada. Written comments concerning the Proposed Criteria may be submitted at the Forum or to the Boulder City Area Office at the address below. Written comments received after March 8, 1982, will not be considered in preparation of the final Power Marketing Criteria. Parties desiring to make oral comments at the Forum must notify the Area Manager in writing by January 15, 1982. A witness list will be prepared in the order in which the notifications are received. The representative for each entity presenting comments will be limited to 30 minutes in which to present the statement of that entity. Those who notify the Area Manager of their desire to present oral comments and are included on the witness list will be heard first. If time remains after all scheduled witnesses are heard, any other attendees will be allowed to make oral statements.

ADDRESSES: Parties desiring to make oral comments at the Forum should notify the Area Manager at the address below. Written comments should also be be directed to: Mr. Robert A. Olson, Area Manager, Boulder City Area Office, Western Area Power Administration, Department of Energy, P.O. Box 200, Boulder City, NV 89005.

SUPPLEMENTARY INFORMATION: Western's Boulder City Area Office conducted an informal public process from September 1978 through September 1981, to develop a power marketing plan for power resources in the Boulder City Area. The Proposed Criteria published in the **Federal Register** resulted from input received during the informal public process. Western is now seeking public comments and opinions concerning the various positions taken by entities during the informal process, the amount of power and energy available for contract offers, the other sections and proposals in the Proposed Criteria, and other material related to the Proposed Criteria.

Issued at Golden, Colorado, December 21, 1981.

Robert L. McPhail,

Administrator.

[FR Doc 81-37054 Filed 12-28-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51372; TSH-FRL-2016-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of two PMNs and provides a summary of each.

DATES: Written comments by: PMN 81-640 and 81-641, February 14, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51372]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 81-640

Close of Review Period. March 16, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Disubstituted phenol.

Use. The manufacturer states that the PMN substance will be used as a minor constituent of an article for commercial and consumer use.

PRODUCTION ESTIMATES

[Kilograms per year]

	Maximum
1st year	2,000
2d year	2,500
3d year	3,000

Physical/Chemical Properties

Melting point—137°C
Solubility:
Water—<0.1%
Octanol—<0.1%

Toxicity Data

Acute oral LD_{50}—>3,000 mg/kg
Acute dermal LD_{50}—>1,000 mg/kg
Skin irritation—Slight

Exposure. The manufacturer states that during manufacture and processing up to 35 workers may experience dermal and inhalation exposure up to 2 hrs/day, up to 10 days/yr during manual transfer operations.

Environmental Release/Disposal. The manufacturer states that release to water will be minimal. Disposal is by incineration or biological treatment systems.

PMN 81-641

Close of Review Period. March 16, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Substituted tetradecanoic acid derivative.

Use. The manufacturer states that the PMN substance will be used as a site-limited chemical intermediate.

PRODUCTION ESTIMATES

[Kilograms per year]

	Maximum
1st year	70,000
2d year	70,000
3d year	70,000

Physical/Chemical Properties. No data were submitted.

Toxicity Data

Acute oral LD_{50}—>3,000 mg/kg
Acute dermal LD_{50}—>10 ml/kg
Skin irritation—Moderate
Skin absorption—May be absorbed

Exposure. The manufacturer states that during manufacture and use up to 80 workers may experience dermal and inhalation exposure 1 hr/day, up to 5 days/yr during manual transfer operations.

Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated.

Dated: December 18, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 81-37042 Filed 12-28-81; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Preparations for the ITU 1983 Region 2 Broadcasting Satellite Service Planning Conference; Subgroup Meeting

December 21, 1981.

Subgroup 1: Service Requirements.

Meeting: Tuesday, January 26, 1982, 9:30 A.M.—4:30 P.M., Federal Communications Commission, 1229 20th Street, NW., Room A-106, Washington, D.C.

Agenda:

(1) Approval of Agenda.
(2) Presentation of Overview of Subcommittee Report.
(3) Consideration of Revision of Amendments to Subcommittee Report.
(4) Planning of Subsequent Work.
(5) Other Business.
(6) Adjournment.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-38958 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

Cordless Phones; Rules Waiver

The Commission has received a petition on December 8, 1981 from the American Telecommunications Corporation (A General Dynamics Subsidiary) requesting a waiver of § 15.7 of its rules to permit more liberal operating conditions for cordless phones in the frequency band 1.6–2.0 MHz. The Commission has also received a letter dated October 27, 1981 from the Personal Radio Section of the Electronic Industries Association suggesting interim technical standards for cordless phones. The EIA letter is being considered a petition for waiver along with the ATC petition.

Both petitions propose to use carrier current techniques on the power wiring in the house. The EIA petition proposes that the maximum signal fed into the power line shall not exceed 500 milliwatts. The American Telecommunications petition states that the present standard in § 15.7 is not adequate and asks the FCC to set a new standard.

Comments on these petitions are invited, particularly with respect to power requirements, and should be submitted not later than February 8, 1982 to the attention of Chief, RF Devices Branch, Office of Science & Technology, FCC, Washington, D.C. 20554. The petitions are available for inspection in Room 8302 of the FCC offices at 2025 M St., NW., Washington, D.C. 20554.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-38962 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

Equality of VHF/UHF Tuning; Petition for Rules Waiver

On December 8, 1981 the Commission received a petition on behalf of Sanyo Manufacturing Corporation, Forrest City, Arkansas, which requests a waiver of § 15.68 of the FCC Rules. The purpose of the request is to permit Sanyo to market a Specific Signal Display/Device with a capability of responding only to one or at most two television channels.

This display device will be used on a cable TV system which converts the TV channels transmitted over the cable system to one of two channels which are then fed into the display device. By adding an RF modulator at the output of a computer, Sanyo's device can also be used as a computer display device.

Sanyo states that its display device will provide substantial benefits to the consumer. Because the VHF/UHF tuning mechanisms are replaced by a simple channel A or B selection switch, the display device will cost between $30–40 less than a conventional color TV receiver. Moreover, the consumer will benefit from increased reliability, improved quality of the display and easier operation.

Comments on this petition are invited and should be submitted not later than January 29, 1982 to the attention of the RF Devices Branch, Office of Science & Technology, FCC, Washington, DC 20554. The Sanyo petition may be inspected in Room 8302 of the FCC offices at 2025 M St., NW., Washington, DC 20554.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-38957 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

[FCC 81-571; BC Docket No. 81-890, File No. BRH-800801 WG, et al.]

Intercontinental Radio, Inc., et al.; Applications

In the matter of Applications of Intercontinental Radio, Inc., San Mateo, California. Has: 107.7 MHz, Channel 299, 6.17 kW(H)–4.45 kW(V), 1162 Feet (H&V). For Renewal of License of Station KSOL(FM) San Mateo, California (BC Docket No. 81-890, File No. BRH-800801WG); Afro-American Communications, San Mateo, California. Req: 107.7 MHz, Channel 299, 6.17 kW(H)–4.45 kW(V), 1162 Feet (H&V) (BC Docket No. 81-891, File No. BPH-801103AL); San Mateo Broadcasting Company, Inc., San Mateo, California. Req: 107.7 MHz, Channel 299, 6.17 kW(H)–4.45 kW(V), 1162 Feet (H&V) (BC Docket No. 81-892, File No. BPH-801027AI); For construction permits; Memorandum opinion and order designating applications for consolidated hearing on stated issues.

Adopted: December 16, 1981.

Released: December 21, 1981.

1. The Commission has under consideration the 1980 application for renewal of license filed by Intercontinental Radio, Inc. ("Intercontinental"), licensee of FM Radio Station KSOL (Channel 299) in San Mateo, California; a petition to deny Intercontinental's license renewal application filed on November 3, 1980, by Mr. Marcus G. Wilcher and the Community Coalition for Media Change ("CCMC"); and two applications for a construction permit for Channel 299 in San Mateo, California filed by San Mateo Broadcasting Company, Inc. ("San Mateo") and Afro-American Communications ("Afro-American"). In addition, this Order will dispose of San Mateo's "Petition For Expedited Processing," Afro-American's "Petition For Immediate Hearing Designation,"

and various pleadings associated with Afro-American's petition.[1]

The Wilcher–CCMC Petition

2. Petitioners assert that KSOL's license renewal application should be denied because, during the past license period, the licensee breached the terms of an agreement with CCMC and engaged in conduct violating various provisions of the National Labor Relations Act ("NLRA"). In addition, petitioners request that the Commission consider numerous other allegations of wrongdoing by the licensee during the 1975–1977 license period. Finally, the petitioners believe, KSOL's license renewal should be denied as contrary to the public interest because the cumulative weight of the facts alleged shows that one of the station's principals possesses serious character deficiencies, and so is unfit to continue as a Commission licensee.

3. According to petitioners, they intended to file a petition to deny KSOL's license renewal in 1977 because they had received several complaints about the station's treatment of its employees during the 1975–1977 license term. However, when a representative of United Broadcasting Company ("United"), Intercontinental's "parent" company, contacted them about a possible negotiated settlement of the disputes, they agreed to forebear from filing the petition. Discussions were initiated between CCMC and Intercontinental and concluded with the signing of an employment agreement which was filed with the Commission in association with KSOL's 1977 renewal aplication.

4. Petitioners contend that Intercontinental breached the agreement when it fired Station Manager Herman Henry one month after the agreement was concluded because, as they understood it, "no one would be fired as the result of the agreement."[2] Indeed, petitioners assert, the licensee had no intention of complying with the terms of the agreement as plans were made to fire Mr. Henry soon after the agreement was completed.

5. In addition, petitioners contend that the licensee, along with United, engaged in conduct violating various provisions of the NLRA. Specifically, Mr. Henry is said to have been fired because he chose to exercise his right to organize his fellow employees and to bargain collectively with his employer. Petitioners also assert that the station offered or paid money and job security to some of its employees in exchange for a vote opposing the efforts to unionize the station.

6. Attached to petitioner's 1980 filing is a document titled "Petition to Deny License," contained allegations that the licensee engaged in conduct violating numerous Commission rules during the 1975–1977 license term. To justify their request for Commission review of these otherwise stale matters, petitioners assert that their reliance upon the licensee's bad faith conduct prevented them from timely filing their "petition" in 1977. Petitioners claim that United and Intercontinental acted in bad faith by inviting CCMC to settle its differences with the station (if they would refrain from filing a petition to deny) when they had no intention of ever abiding by any agreement concluded between them. The negotiations continued beyond the time when petitions to deny KSOL's license renewal were due. Thus, they contend, they were prevented from timely filing their "petition" in 1977.

7. Intercontinental's "Opposition to Petition To Deny Renewal of License"[3] argues that the 1980 CCMC-Wilcher petition fails to meet the requirements of Section 309(d)(1) of the Communications Act of 1934, as amended, because it contains only general, conclusory and unsupported allegations. With regard to CCMC's allegations that Intercontinental acted in bad faith and with deceit and trickery when it entered the agreement with CCMC and when it dismissed Mr. Herman Henry, Intercontinental argues that both are matters of purely private dispute. Similarly, it states, CCMC's claims that Intercontinental violated federal labor laws raise questions inappropriate for consideration by the Commission as they are without merit and involve matters outside the agency's expertise. Finally, Intercontinental argues, CCMC's 1977 petition presents stale matters inappropriate for review. CCMC does not explain, Intercontinental states, why it failed to bring the allegations in its 1977 petition to the Commission's attention before 1980 when it had ample opportunity to do so. Thus, it concludes, both the 1977 and 1980 CCMC-Wilcher petitions must be summarily rejected.

8. Section 309(d)(1) of the Communications Act of 1934, as amended, provides that petitions to deny must set forth specific allegations of fact showing that the petitioner is a party in interest and articulating some substantial factual state of affairs which, if proved true, would establish a *prima facie* case for denying the license renewal.[4] The statute further provides that such allegations must be supported by affidavits of persons with personal knowledge of the facts, unless the allegations concern matters which may be officially noticed.[5] Although petitioners have established their status as parties in interest because they reside within KSOL's service area,[6] we do not

[1] Those pleadings include the "Opposition of Intercontinental Radio, Inc." and "Afro-American's Reply To 'Opposition of Intercontinental Radio, Inc.'"

[2] *See* Petition at p. 3.

[3] Intercontinental filed a "Motion for Extension of Time" on February 27, 1981, March 30, 1981, and April 28, 1981, in which it requested extensions within which to file an opposition to the CCMC "petition to deny". It justified these requests by stating that the press of business made it unable to file an opposition sooner. In addition, in every instance, it gave the Commission notice that it was about to file for an extension. By letter dated April 8, 1981, CCMC protested Intercontinental's requests, alleging that it had not been properly notified of any request for an extension of time. Because it is not represented by counsel, CCMC argued, requests for extensions of time should have been sent directly to it. However, because they were not, it believes, "[a]ny [opposition] by KSOL is untimely and should be dismissed forthwith." According to its "Opposition To Petition To Deny Renewal Of License," Intercontinental has been serving its requests upon Mr. Louis A. Highman, who previously represented CCMC before the Commission in matters relating to Station KSOL. It was doing so, the licensee explained, because "CCMC failed to include an address for CCMC, for Mr. Wilcher, or for any other representative to which Intercontinental could direct its pleadings * * *." *See* Intercontinental's Opposition, p.1.

The Commission believes the public interest will be served by granting Intercontinental's requests and accepting its opposition to CCMC's petition to deny. Good cause for this action is found together in the reasons stated in the requests and from the fact that the requests have not operated to delay the proceedings. Moreover, as Intercontinental pointed out, CCMC has not alleged that it did not receive the extension requests; it merely alleged that it has not been "properly" notified of them. And, CCMC did not assert whether or how it would be prejudiced if the Commission granted Intercontinental's requests.

[4] 47 U.S.C. 309(d)(1).

[5] *Id.*

[6] *Hale* v. *FCC*, 425 F.2d 556, 558 n.2 (D.C. Cir. 1970).

believe they have succeeded in raising a substantial or material question of fact concerning either the CCMC-Intercontinental agreement or the alleged violations of the National Labor Relations Act. Petitioners present no specific allegations which, if proved true, would indicate that Intercontinental dismissed Mr. Henry as a result of his participation in the events leading to the agreement's conclusion.[7] Even if Mr. Henry's dismissal soon after the agreement was concluded were to give rise to an inference that Intercontinental violated some provisions of the NLRA, such a determination falls outside the Commission's province. It has been the Commission's longstanding policy and practice to decline to interfere in matters of alleged violations of federal law where the authority charged with the responsibility of administering those laws has not been presented with an opportunity to review the allegations.[8] In the case before us, there is no indication that petitioners have filed a complaint with the National Labor Relations Board.[9] Nor did they identify the provisions of the NLRA they believe were violated. Further, petitioners submitted no information identifying the persons to whom compensation (or offers of compensation) were allegedly made in exchange for a vote against the efforts to unionize KSOL. Plainly, therefore, the Commission is not in possession of facts establishing a *prima facie* case that the licensee violated federal law or warranting a further inquiry into these matters at the present time.

9. Petitioners' request for review of the matters raised in the 1977 "petition" must also be denied because their allegations of bad faith conduct by the licensee are unsupported by any facts indicating that licensee did not intend to abide by the agreement when it was negotiated, or that licensee has since failed to live up to any of the terms of the agreement. Moreover, we find no compelling reason which warrants the consideration of a petition to deny three years late containing stale allegations dating back to 1975. Such matters are

[9] The Commission is aware, however, that suits alleging illegal employment practices by KSOL have been filed in the United States District Court for the Northern District of California by Mr. Herman Henry and in the Superior Court of California by petitioner CCMC. According to the licensee, the suit filed by Mr. Henry, which involves claims concerning his dismissal from his position as Station Manager, was dismissed by the District Court and its presently on appeal; the suit filed by CCMC is said to be a pending complaint for declaratory and injunctive relief, specific performance and damages. (*See* Intercontinental's 1980 Renewal Application, Exhibit 24, paragraph 24.) Upon the final disposition of the matters there litigated, the Commission will take any action it deems necessary and appropriate.

[10] We discuss petitioners' request for the addition of a character issue at paragraphs 13 and 14, *infra*.

[11] Because the Broadcast Bureau is a party to the WOOK(FM) proceeding, and therefore is prohibited from discussing *ex parte* the merits of that proceeding with the Commission, the following section of this Memorandum Opinion and Order dealing with Intercontinental's qualifications was written by the Office of General Counsel.

[12] On April 18, 1981, the Circuit Court for Montgomery County, Maryland, appointed Suburban Trust Company to act as temporary guardian of the property of Richard Eaton. As a result of this appointment, applications were filed with the Commission on May 18, 1981, for consent to the involuntary transfer of control of United and its various licensee subsidiaries. On June 1, 1981, Richard Eaton died, and his property was transferred, pursuant to the terms of his will, to his Personal Representatives, Suburban Trust Company and Dennison L. Mitchell. As a result of this transfer, and prior to any Commission action on the May 18, 1981, applications, new applications for consent to the involuntary transfer of control of United and its various licensee subsidaries ies to Richard Eaton's Personal Representatives were filed on July 1, 1981. On August 24, 1981, the Commission granted simultaneously both the May 18, and July 1, 1981, applications, with the result that control of United and its various licensee subsidaries has been transferred to Suburban Trust Company and Dennison L. Mitchell, Personal Representatives.

[7] The relevant language provides that:

> The licensee of Station KSOL will agree with CCMC, as follows: (1) Station KSOL will make good faith efforts to recruit qualified Black personnel for all vacancies which may occur on the staff of the station. CCMC does not expect the station to fire or promote any one individual in connection with its good faith efforts.

We do not believe the language of the last sentence must be construed as petitioners assert. Because the agreement speaks of CCMC's expectations about KSOL's future performance, its language is equivocal. Moreover, the language does not clearly establish that KSOL was making any representation to CCMC or the Commission, except perhaps as a point in need of further negotiation or clarification. Moreoever, even if the language were susceptible of no other construction than the one preferred by the petitioners, the licensee remains free to modify employment representations as part of its responsibility and discretion to determine how best to serve the public interest. *Agreements Between Broadcast Licensees and the Public*, 57 FCC 2d 42 (1975).

[8] *Bangor Broadcasting Corporation*, 33 FCC 2d 687 (1972).

[13] *United Television Co.*, 46 FCC 2d 698 (1974); *United Television of New Hampshire*, 46 FCC 2d 702 (1974) *aff'd*. 514 F.2d 279 (D.C. Cir. 1975); *United Broadcasting of Florida*, 55 FCC 2d 832 (1975), *recon. denied* 60 FCC 2d 816 (1976) (hereinafter "WFAB"); *United Television Co.*, 55 FCC 2d 416 (1975), *recon. denied* 59 FCC 2d 663 (1976), *aff'd sub nom. United Broadcasting Co.* v. *FCC*, 569 F.2d 699 (D.C. Cir. 1977), *cert. denied* 434 U.S. 1076 (1978) (hereinafter *WOOK(AM)*).

In the first two decisions, we revoked two of United's television stations because they had been dark for more than two years, thereby depriving viewers of service over those frequencies. In the latter two, we denied two radio station renewals, finding that United was unfit to operate those broadcast facilities.

[14] *United Broadcasting Company*, 45 RR 2d 101 (1979), review denied in *Memorandum Opinion and Order* (FCC 79-323), released June 8, 1979. See also *New Continental Broadcasting Company*, 45 RR 2d 698 (1979).

difficult to verify or refute. In addition, for the most part they are unsupported by affidavits from individuals with personal knowledge of the facts; or, where submitted, the affidavits consist of broad and conclusory opinions which fail to meet the specificity requirements of Section 309(d)(1) of the Act. Accordingly, the matters raised in the 1977 "petition" will be dismissed.[10]

The Competing Application

10. Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the rules. However, we have no evidence that San Mateo published the required notice. To remedy this deficiency, San Mateo will be required to publish local notice of its application and to file a statement of publication as an amendment to its application.

11. Except for its apparent failure to comply with the Commission's publication requirements, applicant San Mateo is qualified to construct and operate as it proposes. An examination of Afro-American's construction permit application indicates that it also is qualified to construct and operate as proposed. In addition, a review of Intercontinental's license renewal application indicates that, except as limited by our discussion in paragraph 14, *infra*, it also is qualified to be a Commission licensee.[11]

12. Information in its 1980 renewal application for Station KSOL indicates that Intercontinental is a wholly-owned subsidary of Tele-Broadcasters, Inc. which in turn, is more than 90 percent owned by United Broadcasting Co. (United). United, until very recently, was wholly-owned by Richard Eaton.[12]

13. Over the past several years, the Commission has denied or revoked four of United's licenses.[13] Recently in *United Broadcasting Co. (WOOK(FM))*, 86 FCC 2d 452 (1981), the Commission held that these prior adverse determinations reflected a pattern of serious misbehavior by United and thereby raised a *prima facie* question about its qualifications to operate WOOK (FM). In designating a qualifications issue, we noted that, since we lacked sufficient evidence to determine whether Richard Eaton was personally responsible for United's misconduct, even if Eaton was removed from United's ownership, a serious question would still remain regarding the soundness and reliability of the licensee's operations. 86 FCC 2d at n. 24.

14. In designating these applications for hearing, we are again confronted with the question whether United's past misconduct should reflect adversely on its qualifications to ramain the licensee of KSOL(FM). Our decision is that it is unnecessary to add a basic qualifications issue to this proceeding at this time. The question of what individuals were responsible for United's prior misconduct is being explored fully in the KSOL(FM) proceeding. After the Administrative Law Judge issues an initial decision in WOOK(FM), the parties to this proceeding may then argue to the Administrative Law Judge whether issues should be added to consider the significance that the findings there have on Intercontinental's qualifications. A final determination as to WOOK(FM)'s qualifications will therefore be conditioned on the outcome of the WOOK(FM) proceeding. Whether Richard Eaton's death has any effect on the resolution of any qualification issue, or the addition of any issues, is a matter, of course, for the Administrative Law Judge to decide initially.

15. In the interest of administrative efficiency, we believe that the Chief Administrative Law Judge should assign this matter to the same judge currently presiding in the WOOK(FM) proceeding.

16. In a "Petition For Expedited Processing," San Mateo argues that the rationale of the *United Broadcasting Co.* decision[14] applies to the instant proceeding. In that decision, the Commission, consistent with its policy of encouraging minority ownership of broadast facilities, granted expedited processing to a minority-owned applicant to relieve it of the substantial delay the Commission was experiencing in designating mutually exclusive applications for hearing.[15] Intercontinental has filed no opposition to San Mateo's petition. However, the Commission's action in designating the applications before us for a consolidated proceeding, we believe, moots San Mateo's petition for expedited processing, so that its merits need not be addressed.

17. Afro-American's "Petition for Immediate Hearing Designation" advances the same arguments but with one difference. In order to more effectively promote minority ownership in the instant case,[16] it adds, the Commission should resolve an outstanding issue concerning the character qualifications of Mr. Richard Eaton in the WOOK(FM) proceeding.[17] By doing so, Afro-American contends, the decision will be *res judicata* for any similar issue raised in the instant proceeding against Intercontinental by virtue of the common ownership of WOOK(FM) and KSOL(FM).

18. In opposition, Intercontinental argues that a bifurcated hearing such as the one proposed by Afro-American would deprive it of its full due process rights. Pointing to a Commission action designating thirteen of RKO General's license renewal applications for hearing after it had been disqualified as a television licensee, Intercontinental argues that it is likewise entitled to a full evidentiary hearing on its license renewal application for KSOL, notwithstanding the possibility that United will be found unfit to remain a Commission licensee in the WOOK(FM) proceeding.

19. In response, Afro-American contends that the Commission's previous conclusions on the character qualifications of RKO General and those it has made concerning the character of Mr. Richard Eaton can be distinguished so as not to require the Commission to conduct a full evidentiary hearing in both the WOOK(FM) and the KSOL(FM) proceedings. The distinguishing factor, according to Afro-American, is that while the Commission in the RKO General proceeding did not purport to issue a final judgment on RKO's qualifications, in designating the renewal applications of Eaton-controlled stations for hearing, the Commission specifically stated that the resolution of the character issues in those proceedings would be "binding on any other licensee commonly owned or controlled with the captioned licensee and will be *res judicata* as to any other such licensee."[18] Thus, Afro-American argues, a determination in the WOOK(FM) proceeding that Mr.

[10] San Mateo's application indicates that each of its two stockholders are Black and that each resides in the San Francisco Bay Area.

[11] Afro-American states that it is a corporation composed solely of Black principals who are residents of the San Francisco-Oakland-San Mateo, California area.

[12] BC Docket No. 80-479; File No. BRH-589.

[13] *United Broadcasting of Florida, Inc.*, 38 FCC 2d 956, 957 (1973).

[14] *United Broadcasting Company*, 45 RR 2d 101 (1979), review denied in *Memorandum Opinion and Order* (FCC 79-323), released June 8, 1979. See also *New Continental Broadcasting Company*, 45 RR 2d 698 (1979).

[15] San Mateo's application indicates that each of its two stockholders are Black and that each resides in the San Francisco Bay Area.

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[17] BC Docket No. 80-479; File No. BRH-589.

[18] *United Broadcasting of Florida, Inc.*, 38 FCC 2d 956, 957 (1973).

Richard Eaton does not possess the requisite character qualifications to remain a Commission licensee will, by virtue of the common control, be *res judicata* with regard to Intercontinental's character qualifications.

20. Afro-American's petition raises a question recently resolved by the Commission in *United Broadcasting Co. (WOOK(FM)), supra*, namely, the extent to which United or its commonly owned and/or controlled licenses should be precluded from relitigating prior findings against United. Although, in the WFAB designation order, we stated that any decision rendered in that proceeding was to be considered *res judicata* as to any other licensee commonly owned or controlled by United, we did not intend to determine United's right to hold other Commission licenses. Rather, we meant to preclude United from relitigating, either directly or through a commonly owned licensee, any adverse findings made there in later proceedings. We also meant to insure that such findings would be taken into account to the extent they raised a negative inference about United's fitness to hold other licenses. Therefore, the doctrine of collateral estoppel, not *res judicata*, should be applied in determining the extent to which prior adverse findings may be relitigated in this proceeding.[19] That is, the prior judgements against United preclude a relitigation only of those matters which actually were in issue and upon which the decision was rendered.[20]

21. With regard to the extent to which collateral estoppel bars relitigation of each of the several independent findings in *WOOK(AM)*, although that decision was judicially affirmed on the basis of United's technical violations alone,[21] we will not interpret the doctrine to entitle United or any commonly controlled licensee, including Intercontinental, to relitigate before this Commission the other findings of misconduct at WOOK(AM). In both the *WOOK(AM)* and *WFAB* proceedings, United exercised its opportunity to litigate the questions surrounding its operation of those stations in evidentiary hearings which were fully adversary in nature, complete with testimony, cross-examination, exhibits, briefs and argument. We have already closely examined the substantial record in *WOOK(AM)* and are confident of the legal analysis in that case. In these circumstances, "finality and efficiency outweigh the possible gains of fairness and accuracy"[22] from relitigating those matters in this forum. As we see it, United and/or Intercontinental will still be able to challenge those earlier, unaffirmed grounds in the U.S. Court of Appeals if those grounds are part of an adverse determination against them in this case.

22. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications of Intercontinental Radio, Inc., Afro-American Communications, and San Mateo Broadcasting Company, Inc. are designated for consolidated hearing, at a time and place to be specified in a subsequent Order, upon the following issues:[23]

1. To determine, which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

23. It is further ordered, that San Mateo Broadcasting Company, Inc. shall publish local notice of its application as required by § 73.3580(f) of the Commission's Rules and file a statement of publication as an amendment to its application pursuant to § 73.3580(h) of the Commission's Rules within 40 days after this Order is published in the **Federal Register.**

24. It is further ordered, that the motions for extensions of time, filed by Intercontinental Radio, Inc. on February 27, 1981, March 30, 1981, and April 28, 1981, are granted, That its "Opposition to Petition to Deny Renewal of License," filed on April 29, 1981 is accepted, and That the petition to deny, filed by Mr. Marcus G. Wilcher and the Community Coalition for Media Change, is denied.

25. It is further ordered, that San Mateo Broadcasting Company, Inc.'s "Petition for Immediate Hearing Designation" is dismissed and Afro-American Communication's "Petition for Expedited Processing" is dismissed and Afro-American Communication's "Petition for Immediate Hearing Designation" is dismissed in part and otherwise denied for the reasons discussed above.

26. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

27. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give local notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

28. It is further ordered, that this case be assigned to the same Administrative Law Judge presently presiding in the United Broadcasting Co. (WOOK(FM)) proceeding.

29. It is further ordered, that the Broadcast Bureau shall send, by Certified Mail, Return-Receipt-Requested, a copy of this *Memorandum Opinion and Order* to each of the parties named herein.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-36961 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 81-847, File No. BPCT-800402KF; BC Docket No. 81-848, File No. BPCT-800520KE]

Light Communications, Inc. and Quality Media Corp., Colorado Springs, Colorado; Applications for Construction Permit

Hearing Designation Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: December 3, 1981.

Released: December 21, 1981.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television broadcast station on Channel 21, Colorado Springs, Colorado and related pleadings.[1]

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[19] The Commission explained the difference between *res judicata* and collateral estoppel in *RKO General, Inc.*, 82 FCC 2d 291, 312-313 (1980) (citations omitted). *See also Gordon County Broadcasting Co. v. FCC*, 446 F.2d 1335, 1338 (D.C. Cir. 1971); *Tomah-Mauston Broadcasting Co. v. FCC*, 306 F.2d 811, 813 (D.C. Cir. 1962); *WIOO*, 68 FCC 2d 127, 128 (1978).

[20] *Id.*

[21] *United Broadcasting Co. v. FCC, supra*, 569 F.2d at 699.

[22] *Nasem v. Brown*, 595 F.2d 801 (D.C. Cir. 1979).

[23] Our determination that Intercontinental possesses the basic qualifications to remain a Commission licensee is conditioned upon the outcome of the WOOK(FM) proceeding. See paragraphs 11 and 14 *supra*.

[1] These pleadings include Petitions for Leave to Amend filed by Light Communications (*LC*) on June

Continued

Light Communications, Inc.

2. Light Communications estimates that it will require $139,595 to construct its proposed station and operate it for three months, itemized as follows:

Equipment (included in operating costs)	To be leased
Land (included in operating costs)	To be leased
Building	$19,000
Legal costs	5,000
Engineering costs	5,000
Installation costs	15,000
Operating costs (3 months)	95,595
Total	139,595

In order to meet the above requirement, Light Communications intends to rely on loans of $50,000 each from Ross Weins, Timothy and Lorraine Timm, and Christian Television Services, Inc. It also relies on a $25,000 line of credit from Exchange Enterprises and prepaid advertising of $26,000 to be purchased by Christian Broadcasting Network.

3. The balance sheet submitted by Ross Weins does not segregate current and long term liabilities. Furthermore, even if we were to assume that he has no current liabilities, Weins' balance sheet indicates that he does not have sufficient net liquid assets to meet his commitment. An examination of the balance sheet submitted by Timothy and Lorraine Timm reveals that their current liabilities exceed current assets and, therefore, no funds appear to be available from them. With respect to applicant's reliance on a line of credit, Exchange Enterprises has not submitted a balance sheet to demonstrate an ability to meet its commitment.

4. Light Communications has demonstrated the availability of only $76,000 to meet its construction and operating costs. Also, since it will be involved in a hearing, applicant's estimate of legal costs appears to be unreasonably low. In view of the foregoing, appropriate financial issues will be specified.

5. We have not received a determination from the Federal Aviation Administration that Light Communications' proposed tower height and location would not constitute a hazard to air navigation. An issue regarding this matter is required.

Quality Media Corporation

6. Quality Media Corporation estimates that it will require $202,950 to construct its proposed station and operate it for three months, itemized as follows:

Equipment	$106,000
Building	4,500
Other items	29,500
Operating costs (3 months)	62,950
Total	202,950

In order to meet the above requirement, Quality Media relies on existing capital of $18,092 and a loan of $600,000 from Keystone Leasing Corporation. Analysis of Quality Media's balance sheet reveals that it has net liquid assets of $18,092. We note, however, that Quality Media has a pending application to construct a new AM station in Pago Pago, American Samoa (BP-800825KF), in which is relies, in part, on existing capital of $43,411 to construct and operate. In view of this other commitment, it does not appear that it can rely on existing capital to construct and operate its proposed station in Colorado Springs.

7. With respect to the $600,000 loan from Keystone Leasing Corporation, Quality Media has not submitted a balance sheet to document Keystone's ability to meet its commitment.[1] Furthermore, the loan letter from Keystone states that it proposes "* * * to loan or facilitate the loaning of $600,000 * * *," but there is no indication as to the identity of the ultimate source of the funds should Keystone elect to seek a secondary funding source.

8. In view of the foregoing, Quality Media has not demonstrated the availability of any funds to construct and operate as proposed. Accordingly, a general financial issue will be specified.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Adminsitrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Light Communciations, Inc.:

(a) Whether applicant's estimate of legal costs is reasonable;

(b) Whether applicant has sufficient funds available to construct its proposed station and operate it for three months;

(c) Whether, in light of the evidence adduced pursuant to (a) and (b) above, applicant is financially qualified;

(d) Whether there is a reasonable possibility that the tower height and location proposed by applicant would constitute a hazard to air navigation;

(e) Whether, in light of the evidence adduced pursuant to (d) above, applicant is qualified.

2. To determine with respect to Quality Media Corporation:

(a) The source and availability of $202,950 to construct its proposed station and operate it for three months;

(b) Whether, in light of the evidence adduced pursuant to (a) above, applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, should be granted.

11. It is further ordered, That the petitions for leave to amend filed by Light Communications, Inc. are granted.

12. It is further ordered, that the Federal Aviation Administration is made a party to this proceeding with respect to Issue 1(d).

13. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days from the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications

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16 and July 16, 1981; Comments on LC's petitions filed by Quality Media Corporation (QM) on June 18 and July 21, 1981; Reply to Comments filed by LC on July 29, 1981; Motion to Strike filed by QM on July 29, 1981; and Opposition to Motion to Strike filed on August 5, 1981, by LC.

The amendments accompanying LC's petitions report the resignation of a board member, the relocation of its public file and that two of its principals have assumed temporary residence in San Antonio, Texas and temporary employment with Station KCIK-TV, San Antonio. QM's pleadings essentially concern the fact that LC failed to report the dates on which the events occurred and it requests that we require LC to provide the dates or deny the petitions. However, QM has not shown that these dates are of any decisional value. If QM can show the importance of this information, it may seek to enlarge the issues.

Since the information provided by LC is required by § 1.65 of the Rules and will not affect its comparative posture, the petitions to accept the amendments will be granted.

[1] Section III, page 3, Item 4(e) of FCC Form 301 exempts equipment manufacturers who extend credit for equipment from submitting a balance sheet. This exemption has also been applied to companies that are in the business of buying and leasing equipment (See *Trinity Broadcasting of Denver, Inc.*, mimeo no. 34783, released August 15, 1980), but does not apply to equipment leasing companies that propose to loan money to an applicant rather than lease equipment.

Act of 1934, as amended and § 73.3594 of the Commission 's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 81-36559 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 81-862, File No. BPCT-81036KE, et al.]

Pan-Pacific Broadcasting, Inc., et al.; Applications

In re applications of Pan-Pacific Broadcasting, Inc., Riverside, California (BC Docket No. 81-862, File No. BPCT-810306KE); Kist Corp., Riverside, California (BC Docket No. 81-863, File No. BPCT-810717KK); Focus Broadcasting of Riverside, Inc., Riverside, California (BC Docket No. 81-864, File No. BPCT-810720KI); Riverside Telecasters, Inc., Riverside, California (BC Docket No. 81-865, File No. BPCT-810720KJ); Ettlinger Broadcasting Corporation, Riverside, California (BC Docket No. 81-866, File No. BPCT-810720KK); Sunland Communications Company, Riverside, California (BC Docket No. 81-867, File No. BPCT-810720KL); Bethel Broadcasting, Inc., Riverside, California (BC Docket No. 81-868, File No. BPCT-810720KM); Channel 62, a Limited Partnership, Riverside, California (BC Docket No. 81-869, File No. BPCT-810720KN); Riverside Family Television, Inc., Riverside, California (BC Docket No. 81-870, File No. BPCT-810720KO); and United American Telecasters, Inc., Riverside, California (BC Docket No. 80-871, File No. BPCT-810720KQ); For a television construction permit; Hearing designation order designating applications for consolidated hearing on stated issues.

Adopted: December 11, 1981.

Released: December 23, 1981.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it: (a) the above-captioned mutually exclusive applications of Pan-Pacific Broadcasting, Inc. (Pan-Pacific), KIST Corp. (KIST), Focus Broadcasting of Riverside, Inc. (Focus), Riverside Telecasters, Inc. (River Tel), Ettlinger Broadcasting Corporation (Ettlinger), Sunland Communications Company (Sunland), Bethel Broadcasting, Inc. (Bethel), Channel 62, a Limited Partnership (Channel Partnership), Riverside Family Television, Inc. (Family), and United American Telecasters, Inc. (United) for a new commercial television station to operate on Channel 62, Riverside, California; (b) petitions to deny filed by KIST against United, KIST against Bethel, and United against Focus;[1] (c) Family's October 14, 1981, "Motion for Leave to Accept Untimely Amendment" *(sic)*, and (d) related pleadings.

2. Since we have not received determinations from the Federal Aviation Administration that Sunland's, Bethel's, and United's proposed tower heights and locations would not constitute a hazard to air navigation, an issue regarding this matter is required.

KIST Corp.

3. KIST estimates that $1,700,000 will be required to construct its proposed station and to operate it for three months, itemized as follows:

Equipment	$1,038,000
Land	(1)
Building	100,000
Legal, engineering, installation, and other miscellaneous costs	160,000
Operating costs (3 months)	402,000
Total	1,700,000

[1] Lease.

To meet this requirement, KIST intends to rely on $103,943 in existing capital and a $2,000,000 (net $1,900,000) loan from the Desert Community Bank in Victorville, California. KIST does not set out the cost of the land lease; however, since it is unlikely that its cost to lease the land would exceed $303,943 (the amount available to the applicant after it meets its other expenses), we will not specify a financial issue.

Focus Broadcasting of Riverside, Inc.[2]

4. Focus estimates that $3,141,000 will be required to construct its proposed station and to operate it for three months, itemized as follows:

Equipment	$2,764,000
Land (lease)	1,000
Building	20,000
Legal, engineering, installation and other miscellaneous costs	190,000
Operating costs (3 months)	166,000
Total	3,141,000

To meet this requirement, Focus intends to rely on funds received through an agreement with an undetermined subscription television (STV) franchisee and from revenues from the sale of commercial announcements during non-STV programming time. The availability of any funds from a franchisee is conjectural, since Focus has not even filed an application for STV authorization. Further, the Commission requires that television applicants demonstrate sufficient capital to construct the station and operate it for 90 days without advertising or other broadcast revenue. *New Financial Qualifications Standard for Broadcast Television Applicants*, 72 F.C.C. 2d 784 (1979). Since Focus cannot rely on STV funds or commercial revenues, we are unable to determine the availability of any funds to the applicant, and an appropriate financial issue will be specified.

Riverside Telecasters, Inc.

5. River Tel estimates that $860,034 will be required to construct its proposed station and to operate it for three months, itemized as follows:

Equipment:	
downpayment	$373,250
3 months	170,451
Land [1]	(1)
Building	35,000
Studio rent (5 months)	5,833
Legal, engineering, installation, and other miscellaneous costs	76,000
Operating costs (3 months)	199,500
Total	860,034

[1] Lease.

River Tel does not set out the cost of the land lease. Accordingly, an appropriate issue will be specified.

6. To meet its expenses, River Tel intends to rely on a $1,000,000 (net $945,000) loan from the Shawmut Bank of Boston, Massachusetts, and $1,000 in existing capital. River Tel's loan is contingent on the "personal endorsements of the principal corporate officers" of the applicant; however, the principals have not indicated a willingness to furnish such endorsements. Consequently, we can determine the availability of only $1,000, and an appropriate issue will be specified.

7. River Tel requests two waivers of the Commission's Rules. Section

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[1] The petitions are, in essence, pre-designation petitions to specify issues. Since such petitions are no longer permitted, they will be dismissed. *Processing of Contested Broadcasting Applications*, 72 F.C.C. 2d 202 (1979).

[2] Of Focus' officers, directors, and stockholders, Douglas Ruhe, Beverly Ruhe, William Geissler, Judith Geissler, Irene Chung, Dwight Allen, and the Allen Investment Company also have interests in:

WFBN(TV), Joliet, Illinois (grantee).

Channel 14, Washington, DC (applicant).

Channel 64, Kannapolis, North Carolina (applicant).

Channel 39, Murfreesboro, Tennessee (applicant).

Channel 49, Norfolk, Virginia (applicant).

Channel 67, Seaside, California (applicant).

Channel 40, Tucson, Arizona (applicant).

Section 73.636(a)(2) of the Commission's Rules limits a party to direct or indirect interest in no more than seven television stations.

73.685(e) states that UHF stations with transmitters delivering a peak visual power output of more than 1 kilowatt may employ directional antennas with a maximum to minimum ratio of not more than 15 dB. River Tel proposes visual power of 55 kw, and the maximum to minimum ratio would exceed 180 dB. In addition, § 73.614(a) requires a minimum radiation of −10 dBk in any horizontal direction; however, at N 10° E, River Tel's proposed radiation would be far less than the required minimum. both waiver requests will be granted since the land area which lies in the direction of the antenna's null region is extremely mountainous and would serve as an effective terrain barrier to the propagation of signals, and the area is sparsely populated.

Ettlinger Broadcasting Corporation

8. Ettlinger estimates that $855,000 will be required to construct its proposed station and to operate it for three months, itemized as follows:

Equipment	$649,000
Land	(1)
Legal, engineering, installation, and other miscellaneous costs	86,000
Operating costs (3 months)	120,000
Total	855,000

[1] Lease.

To meet this requirement, Ettlinger intends to rely on a $1,000,000 loan from John A. Ettlinger. Ettlinger does not set out the cost of the land lease or the cost of acquiring the necessary buildings;[3] however, since it is unlikely that Ettlinger's cost to lease the land and acquire buildings would exceed $145,000 (the amount available to the applicant after it meets its other expenses), we will not specify a financial issue.

Sunland Communications Company

9. Sunland estimates that $2,210,793 will be required to construct its proposed station and to operate it for three months, itemized as follows:

Equipment	$1,291,501
Buildings	225,000
Studio and transmitter site rent (5 months)	16,667
Legal, engineering, installation, and other miscellaneous costs	282,500
Operating costs (3 months)	395,125
Total	2,210,793

To meet this requirement, Sunland intends to rely totally on the contribution of capital by general partners in the following percentages: Jack Hodin (55% or $1,215,936), Andres Soto (35% or $773,778), and George Strimel (10% or $221,079). Neither Soto nor Strimel has demonstrated the availability of net liquid assets to meet their pledges, and Hodin has shown the availability of only $184,200 to Sunland, and an appropriate financial issue will be specified.

Bethel Broadcasting, Inc.

10. Bethel estimates that $1,337,800 will be required to construct its proposed station and to operate it for three months, itemized as follows:

Equipment	$1,064,000
Building	50,000
Transmitter housing and tower lease (5 months)	5,000
Legal, engineering, installation and other miscellaneous costs	85,000
Operating costs (3 months)	133,800
Total	1,337,800

11. To meet this requirement, Bethel intends to rely on $747,555 in deferred credit from its equipment supplier, Video Equipment Corporation of America, $650,000 in contributions from the Bethel Assembly of God Church and its congregation, and $10,000 in existing capital. Since it has not submitted an agreement with its equipment supplier, the applicant cannot rely on deferred credit for equipment. Further, Bethel cannot rely on $650,000 in contributions in the absence of signed pledges and individual balance sheets indicating the availability of the money pledged. Consequently, we can determine the availability of only $10,000, and an appropriate issue will be specified.

12. With respect to its proposed tower and transmitter, Bethel refers to information filed by Rand Communications Corporation, with which it has no connection, in an unspecified application. Instruction E aof the FCC Form 301, however, provides that information may be incorporated by reference from another application only if it was filed by or on behalf of the same applicant and if it is fully referenced by file number to the other application. In addition, in response to Question 13 of Section V–C of the application, Bethel refers to exhibits E–3 and E–4, but failed to submit those exhibits, and the applicant failed to respond to Questions 15 and 16. Consequently, Bethel will be required to submit the necessary information within 20 days of the mailing of this Order.

Channel 62, A Limited Partnership

13. Channel 62, Incorporated (Channel, Inc.), a 25% general partner of the applicant, is wholly owned by the Greater Riverside Chambers of Commerce (Chambers). Tables I and II of Section II of FCC Form 301 require

[3] Although Ettlinger indicates that $1,200 of its proposed operating costs for three months will be attributable to rent, the applicant does not specify what is to be rented.

that if an applicant is a partnership, it provide information as to each general or limited partner (the name and address, date and place of birth, nature of partnership interest, percent of ownership interest, occupations or businesses engaged in during the past five years, and relationship to or interest in such concerns). The applicant, however, has not furnished the required information as to Channel, Inc. and Chambers. In addition, at Question 17(a) of Section II of the 301 Form the applicant states that it, or partners to the application, have or had interests in other broadcast stations; however, it has not furnished the information on such interests as required by Questions 17(1)–17(4) of Section II of the application. Consequently, we cannot determine that Channel Partnership is legally qualified, and appropriate issues will be specified.

14. Channel Partnership estimates that $1,268,143 will be required to construct its proposed station and to operate it for three months, itemized as follows:

Equipment on deferred credit:	
Downpayment	$350,000
4 months	119,875
Equipment by cash	187,610
Building	154,000
Legal, engineering, installation, and other miscellaneous costs	261,658
Operating costs (3 months)	195,000
Total	1,268,143

The applicant does not set out the cost of leasing or purchasing land. Accordingly, an appropriate issue will be specified.

15. To meet this requirement, Channel Partnership intends to rely on a $2,600,000 (net $2,158,000) loan from the Security Pacific National Bank of Riverside, $150,100 in contributions from partners, and $100,000 in existing capital. The bank states that it "will consider" the loan request only after Channel Partnership's application has been granted and that the submitted bank letter should not be considered a commitment of the bank. Consequently, the applicant cannot rely on the availability of such funds. Further, the applicant has not demonstrated the availability of any existing capital, since it failed to submit its balance sheet, as required by Question 2a of Section III of the 301 Form. With regard to the partnership contributions, we can determine the availability of only $61,778.[4] Accordingly, an appropriate financial issue will be specified.

Riverside Family Television, Inc.

16. In support of its "Motion for Leave to Accept Untimely Amendment" (*sic*) (see paragraph 1, *supra*), Family argues that neither its counsel, its consulting engineer, nor its broadcast consultant, all of whom are located in Tennessee, received the Commission's cut-off notice setting September 7, 1981, as the final date for filing minor amendments as of right prior to designation for hearing, until September 10. Family states that because cut-off lists are no longer published in the **Federal Register** and because its counsel, engineer, and broadcast consultant are located in Tennessee, it relies upon the Commission's official contractor to supply copies of Commission public notices. Family alleges that the contractor failed to furnish copies of the cut-off list until after the cut-off date had passed. The allegation is supported by affidavits of its counsel, engineer, and broadcast consultant. Family asserts that the failure of the contractor constitutes good cause for its inability to file its amendment by the cut-off date. KIST, United, and Channel Partnership, however, contend that it was incumbent upon Family's counsel to ensure that no notices of deadlines would be missed or overlooked, but they do not suggest what could have been done and was not done. Nevertheless, they point out that the amendment was not filed until five weeks after Family's counsel learned of the cut-off notice.

17. We think that good cause has been shown. Since Family's counsel, engineer, and broadcast consultant are all located in Tennessee, it seems to us that they did all that a reasonable person could do: they arranged with the Commission's official contractor to see that the vital notices were furnished. Since a cut-off notice normally allows about five weeks from its adoption date to the cut-off date, it does not appear that Family lacked diligence in the preparation and filing of its amendment within five weeks of learning of the cutoff date. Moreover, the amendment would eliminate an issue and would

[4] Lucille Gilbreath, Clare Taber, Russell Walling, and Norton Younglove each has demonstrated net liquid assets to meet their $15,000 commitments, and John and Patricia Gilbreath have demonstrated net liquid assets of $1778 toward their $7500 commitment. Channel, Inc. did not submit a balance sheet; Jack Chase's balance sheet was outdated upon the filing of the application, and the balance sheets of Ronald Pettis, Robert Hocker, Betty Johnson, Arthur Lopez, and Albert Kishaba do not demonstrate the availability of any net liquid assets.

[4] Lucille Gilbreath, Clare Taber, Russell Walling, and Norton Younglove each has demonstrated net liquid assets to meet their $15,000 commitments, and John and Patricia Gilbreath have demonstrated net liquid assets of $1778 toward their $7500 commitment. Channel, Inc. did not submit a balance sheet; Jack Chase's balance sheet was outdated upon the filing of the application, and the balance sheets of Ronald Pettis, Robert Hocker, Betty Johnson, Arthur Lopez, and Albert Kishaba do not demonstrate the availability of any net liquid assets.

simplify the proceeding. Since processing of the Riverside applications had not yet begun when the amendment was filed, there was no disruption or delay in the processing procedure. Although we will accept the amendment for good cause shown, we will not allow Family to accrue any comparative advantage by reason of the amendment.

United American Telecasters, Inc.

18. United estimates that $2,187,285 will be required to construct its proposed station and to operate it for three months, itemized as follows:

Equipment	$1,800,000
Studio and transmitter site lease (5 months)	11,835
Building	15,000
Legal, engineering, installation, and other miscellaneous costs	125,000
Operating costs (3 months)	235,450
Total	$2,187,285

19. To meet this requirement, United intends to rely on a $3,000,000 (net $2,670,000) loan from the Korea Exchange Bank in Los Angeles and $100,000 in stock subscriptions. As a condition of the bank loan, it must be secured by a stand-by letter of credit issued by a major bank; however, no such letter of credit has been submitted. Consequently, United has not provided reasonable assurance of the availability of the bank loan. With respect to the stock subscriptions, none of the subscribers has demonstrated the availability of any net liquid assets to meet their commitments. Accordingly, an appropriate financial issue will be specified.

20. United proposes an antenna height above average terrain (HAAT) of 2388 feet. Sections 73.614(b)(2) and 73.699, Figure 4 of the Rules limit the maximum visual effective radiated power (ERP) of a television station in Zone II with such a HAAT to 35.7 dbk; however, United proposes 36.02 dbk. Accordingly, United will be afforded 20 days from the mailing of this Order, or such additional time as may be provided by the Presiding Officer, in order to meet the requirements of § 73.614(b)(2) and 73.699, Figure 4.

Conclusion and Order

21. Except as indicated by the issue specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues set out below.

22. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Focus Broadcasting of Riverside, Inc.:

(a) Whether the applicant has available $3,141,000 for its construction and three month operating costs.

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine with respect to Riverside Telecasters, Inc.:

(a) The cost of leasing a tower site for five months;

(b) Whether the applicant has available an additional $859,034 plus the cost of leasing a tower site;

(c) Whether, in light of the evidence adduced pursuant to (a) and (b) above, the applicant is financially qualified.

3. To determine with respect to Sunland Communications Company:

(a) Whether the applicant has available an additional $2,026,593 for its construction and three month operating costs;

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

4. To determine with respect to Bethal Broadcasting, Inc.:

(a) Whether the applicant has available an additional $1,327,800 for its construction and three month operating costs;

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

5. To determine with respect to Channel 62, a Limited Partnership;

(a) The information required by Tables I and II, Section II, FCC Form 301 with respect to officers, directors, and stockholders of Channel 62, Incorporated and the Greater Riverside Chambers of Commerce;

The information required by questions 17(1)–17(4), Section II, FCC Form 301;

(c) Whether, in light of the evidence adduced pursuant to (a) and (b) above, the applicant is legally qualified;

(d) The Cost of purchasing or leasing land for five months;

(e) Whether the applicant has available an additional $1,206,365 plus the cost of purchasing or leasing the land;

(f) Whether, in light of the evidence adduced pursuant to (d) and (e) above, the applicant is financially qualified.

6. To determine with respect to United American Telecasters, Inc.:

(a) Whether the applicant has available $2,187,285 for its construction and three month operating costs;

(b) Whether in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

7. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Sunland, Bethel, and United would constitute a hazard to air navigation.

8. To determine which of the proposals would, on a comparative basis, best serve the public interest.

9. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

23. It is further ordered, that the petitions to deny filed by KIST and United are dismised.

24. It is further ordered, that Family's Motion for Leave to Accept Untimely Amendment is granted.

25. It is further ordered, that the Federal Aviation Administration is made a party respondent in respect to Issue 7.

26. It is further ordered, that River Tel's requests for waiver of §§ 73.685(e) and 73.614(a) of the Rules are granted.

27. It is further ordered, that within 20 days of the mailing of this Order, Bethel shall:

(a) Respond to Questions 4, 7, 15, and 16 of Section V–C and all of Section V–G of its application;

(b) Submit exhibits E–3 and E–4 to its application.

28. It is further ordered, that within 20 days of the mailing of this Order or within such additional time as may be provided by the Presiding Officer, United shall amend its application to meet the requirements of §§ 73.614(b)(2) and 73.699, Figure 4 of the Rules.

29. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

30. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act and § 73.3594 of the Commission's Rules, give notice of the hearing within

the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 81-36060 Filed 12-28-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Agreements Nos. T-4006, T-4007, T-4008 and T-4009]

Availability of Findings of No Significant Impact

Upon completion of environmental assessments, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on the proposed actions listed below will not constitute major federal actions significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of environmental impact statements is not required.

Agreement No. T-4006 is between the City of Oakland and Canal Industrial Park, Inc. (CIP). CIP will use berths 10, 11 and 12, including backup area, at the Outer Harbor Terminal for handling vessels and general cargo. There will be no change in the use of the marine terminal. CIP has been using these premises for the same purpose for the past 18 months under Port of Oakland Tariff No. 2.

Agreement No. T-4007 is between the Board of Trustees of the Galveston Wharves and Southern Stevedoring Company, Inc. (SSC), covering a terminal area including piers 19 and 21 at the Port of Galveston. SSC will use this area for handling bananas and other tropical fruits, and other general cargo. This agreement replaces a previous lease agreement (T-3207) for the same premises. The new agreement is basically identical to the expired Agreement No. T-3207, except that a small corner of the leased premises is deleted.

Agreement No. T-4008 is between the City of Oakland (the Port) and Marine Terminals Corporation (MTC). MTC will perform marine terminal operating and cargo solicitation services utilizing berths G, H, I and J of the Port's Seventh Street Terminal and three container cranes for loading and discharging cargoes on a nonexclusive basis.

Agreement No. T-4009 is between the Port, MTC and Hapag-Lloyd, AG (H-L). Under this agreement, the Port will assign portions of the Seventh Street Terminal to H-L for berthing vessels and for loading and discharging cargoes moving in the latter's transpacific service. In addition, H-L will negotiate a stevedoring and terminal service contract with MTC.

These Findings of No Significant Impact (FONSI) will become final by January 18, 1982 unless petitions for review are filed pursuant to 46 CFR 547.6(b).

The FONSIs and related environmental assessments are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 81-37050 Filed 12-29-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 81-77]

U.S. South Atlantic and Gulf/Panama and Costa Rica Rate Agreement and U.S. South Atlantic and Gulf/Guatemala, Honduras and El Salvador Rate Agreement; Order of Investigation and Hearing and Pendente Lite Approval

In the matter of U.S. South Atlantic & Gulf/Panama & Costa Rica Rate Agreement (Agreement No. 10045-6) and U.S. South Atlantic & Gulf/Guatemala, Honduras & El Salvador Rate Agreement (Agreement No. 10105-4).

The above-captioned agreement modifications (Agreements) have been filed for approval pursuant to section 15 of the Shipping Act, 1916 (46 U.S.C. 814). Their purpose is to extend indefinitely the terms of approval of the underlying rate agreements.* Agreement No. 10045 is a 48-hour rate agreement among Coordinated Caribbean Transport, Inc., Pan Atlantic Lines and Sea-Land Service, Inc. Agreement No. 10105 is also a 48-hour rate agreement among the same three parties as well as with Uiterwyk Lines. Agreements Nos. 10045 and 10105 were originally approved on July 5, 1973 and May 23, 1974, respectively. Notice of the filing of the amended agreements was published in the August 19, 1981 **Federal Register** (46 FR 42193) and failed to elicit any comments.

From the time of their original approval until November 10, 1980, when the parties met the Commission's September 15, 1980 conditions of approval, the subject agreements were limited in scope to Florida ports. While Proponents had sought expansion of the agreements' scope to include the entire U.S. Atlantic and Gulf Coast in order to achieve service and rate stability, the Commission extended the range of U.S. ports only to the South Atlantic and Gulf. In approving these Agreements on September 15, 1980, the Commission further limited them to a one year period, which became effective November 10, 1980, in order to assess the impact of the expanded scope of the agreements on the respective trades. The parties were further directed to provide the Commission with statistics showing their total cargo movements and rate levels in the subject trades for their principal moving commodities.

After the November 10, 1980 one-year approval of Agreements 10045-3 and 10105-1, nearly three months were consumed by the parties in formulating new tariffs to reflect the agreements' expanded scope. Owing to the time utilized for developing these tariffs and the need for the agreements to again be filed with the Commission in advance of their expiration, the Proponents were able to provide the Commission with trade and carriage data covering only six months of the one-year approval period.

In its September 15, 1980 conditional approval of Agreements Nos. 10045-3 and 10105-1, the Commission concluded that the Proponents had demonstrated the existence of past rate instability and the potential for future rate instability. The data submitted by Proponents with the instant filing do not demonstrate that the rate agreements have ameliorated this instability. However, in view of the relatively short time available for determination of the agreements' actual effect on the trades, the Commission will permit the parties to develop further evidence which the Commission requires to realistically assess the agreements' impact. Based upon a review of the limited data furnished, the Commission believes that the stabilizing effect which proponents contended would result from the expanded scope of the Agreements, both in their 1980 request for section 15 approval and in the instant filing, has not yet occurred. Rather than granting the indefinite extension sought, the Commission therefore will commence a full investigation and hearing, subject to *pendente lite* approval.

* The underlying agreements were granted continuing temporary approval through December 31, 1981 by Commission Order of November 6, 1981. This was necessary in order to avoid lapse in their approval.

Because the subject agreements fix rates charged by their parties, they are contrary to the public interest and thus subject to the standards of *F.M.C. v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238, 243 (1968). In making its determination under section 15 of whether the instant Agreements continue to meet the *Svenska* standards, the Commission intends to consider the following factors, among others:

(1) The impact of the agreements on the rates and cargo shares of the parties in the subject trades;

(2) The impact of the agreements on overall rate stability and service in the trades;

(3) The utilization of intermodal authority; and

(4) The effect, if any, of overlapping conferences.

Therefore, it is ordered, that pursuant to sections 15 and 22 of the Shipping Act, 1916 (46 U.S.C. 814 and 821), a proceeding is instituted to determine whether: (1) Agreement No. 10045–6 should be approved, disapproved or modified; and (2) whether Agreement No. 10105–4 should be approved, disapproved, or modified under the provisions of section 15; and

It is further ordered, that Coordinated Caribbean Transport, Inc., Pan Atlantic Lines, Sea-Land Service, Inc. and Uiterwyk Lines are designated as Proponents in this proceeding; and

It is further ordered, that pursuant to Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42) the Commission's Bureau of Hearings and Field Operations (Hearing Counsel) shall be a party to this proceeding; and

It is further ordered, that other persons having an interest in participating in this proceeding may file a petition for leave to intervene in accordance with section 46 CFR 502.72 of the Commission's Rules (46 CFR 502.72); and

It is further ordered, that this Order be published in the **Federal Register** and a copy served upon Proponents and the Commission's Bureau of Hearings and Field Operations; and

It is further ordered, that this matter be assigned for public hearing and decision by an Administrative Law Judge at a date and place to be hereafter determined by the Commission's Presiding Administrative Law Judge, within the time limits prescribed in 46 CFR 502.61. This hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue otherwise requires an oral hearing and cross-examination for the development of an adequate record; and

It is further ordered, that all future notices, orders, or decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, be mailed directly to all parties of record; and

It is further ordered, that all documents submitted by any party in this proceeding be filed in accordance with § 502.118 of the Commission's Rules (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

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[Commission Order No. 1 (Revised)]

Organization and Functions of the Federal Maritime Commission

November 12, 1981.

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Section 1. Purpose

1.01 This Order describes the organization and functions of, and delegates authority within, the Federal Maritime Commission.

Section 2. Organization of the Federal Maritime Commission

2.01 *Establishment and Composition of the Commission*—The Federal Maritime Commission was established as an independent agency by Reorganization Plan No. 7 of 1961, effective August 12, 1961. The Federal Maritime Commission is composed of five Commissioners, appointed by the President, by and with the consent of the Senate. The President designates one of the Commissioners to be the Chairman.

2.02 *Quorum*—Any three members in office constitute a quorum for the transaction of the business of the Federal Maritime Commission. The affirmative vote of any three Commissioners shall be sufficient for the disposition of any matters which may come before the Commission.

2.03 The Federal Maritime Commission is responsible for administering the statutory functions and programs for the regulation of common carriers by water in the foreign and domestic offshore commerce of the United States and of other persons, under provisions of the Shipping Act, 1916, as amended; the Merchant Marine Act, 1920, as amended; the Intercoastal Shipping Act, 1933, as amended; section 311 of the Clean Water Act of 1977, P. L. 95–217; sections 2 and 3, P.L. 89–777, Financial Responsibility for Death or Injury to Passengers and for Non-Performance of Voyages; subsection 204(c) of the Trans-Alaska Pipeline Authorization Act, P.L. 93–153; section 305(a)(1) of the Outer Continental Shelf Lands Act Amendments of 1978, P.L. 95–372; and other applicable statutes.

Section 3. Organizational Components

The Federal Maritime Commission has the following major organizational components:

(1) Office of the Chairman of the Federal Maritime Commission

(2) Offices of the Members of the Federal Maritime Commission

(3) Managing Director

(4) Office of the General Counsel

(5) Office of the Secretary

(6) Office of Administrative Law Judges

(7) Office of Regulatory Policy and Planning

(8) Bureau of Agreements

a. Office of Conferences

b. Office of Carrier Relationships

c. Office of Shoreside Agreements

d. Office of Trade Review

(9) Bureau of Tariffs

a. Office of Foreign Tariffs

b. Office of Domestic Tariffs

c. Office of Financial Analysis

(10) Bureau of Certification and Licensing

a. Office of Vessel Certification

b. Office of Freight Forwarders

(11) Bureau of Hearings and Field Operations
a. Office of Hearing Counsel
b. Office of Investigations
(12) Office of Consumer Affairs
(13) Office of Energy and Environmental Impact
(14) Office of Personnel
(15) Office of Budget and Financial Management
(16) Office of Management Evaluation and Review
(17) Office of Data Systems
(18) Office of Administrative Services
(19) District Offices
a. Atlantic District (New York)
b. Great Lakes District (Chicago)
c. Gulf District (New Orleans) Miami Sub-Office
d. Mid-Atlantic District (Washington)
e. Pacific District (San Francisco) Los Angeles Sub-Office
f. Puerto Rico District (Hato Rey, Puerto Rico)

Section 4. Lines of Responsibility

4.01 The *Managing Director* reports to the Chairman and the Commission.

4.02 The *Office of General Counsel*, the *Office of the Secretary*, and the *Office of Regulatory Policy and Planning* report to the Chairman and the Commission, subject to the management direction of the Managing Director with respect to overall Commission workflow, resource allocation (both staff and budgetary), work priorities, and similar managerial matters.

4.03 The *Office of Administrative Law Judges* reports to the Chairman, subject to the administrative direction and coordination of the Managing Director.

4.04 The *Bureau of Agreements, Bureau of Tariffs, Bureau of Certification and Licensing, Bureau of Hearings and Field Operations, Office of Personnel, Office of Budget and Financial Management, Office of Data Systems*, and *Office of Administrative Services* report to the Managing Director.

4.05 The *Office of Consumer Affairs* reports to the Chairman, through the Managing Director, on the progress and status of all consumer activities within the Commission.

4.06 The *Office of Energy and Environmental Impact* reports to the Managing Director, but receives procedural guidance, advice and assistance from the Secretary, and issues all impact Statements through the Secretary.

4.07 The *Office of Management Evaluation and Review* reports to the Managing Diretor, except with respect to Inspector General matters for which it reports directly to the Chairman.

4.08 The *District Offices* report to the Director, Bureau of hearings and Field Operations.

Section 5. Specific Functions of the Organizational Components of the Federal Maritime Commission

5.01 The *Office of the Chairman of the Federal Maritime Commission* administers the activities of the Federal Maritime Commission; serves as the executive head of the Commission; presides at meetings of the Commission; administers the policies of the Commission to its responsible officials; and, through conferences with and reports from such officials, assures the efficient discharge of their responsibilities.

5.02 The *Offices of the Members of the Federal Maritime Commission* are responsible for establishing the policies of the Commission together with the Chairman; make decisions and determinations in the disposition of docketed cases and other matters within the jurisdiction of the Commission; and perform other duties as may be assigned under the provisions of Reorganization Plan No. 7 of 1961.

5.03 The *Managing Director* administers the organizations and activities enumerated in subsections 5.08 through 5.19 below; provides management direction to the Office of the General Counsel, Office of the Secretary, Office of Regulatory Policy and Planning and Office of Administrative Law Judges with respect to all matters concerning overall Commission workflow, resource allocation (both staff and budgetary), work priorities, and similar managerial matters; assists the Chairman and/or the Federal Maritime Commission in the performance of major executive functions; is responsible for the security of classified State Department documents, subject to review of the Commission's Security Officer; and directs general administrative activities.

5.04 The *Office of the General Counsel*

(1) Provides legal counsel to the Commission;

(2) Provides written legal opinions to the Commission, to the staff and to the general public in appropriate cases;

(3) Prepares and/or reviews for legal sufficiency, before service, all final Commission decisions, orders and regulations, except as otherwise provided under subsection 5.11(1)f of this Order;

(4) Monitors, reviews and, as requested by the Committees of the Congress, the Office of Management and Budget, or a Commission official, prepares comments on all legislation introduced in the Congress affecting the Commission's programs or activities, and prepares draft legislation or amendments to legislation; works in close coordination with respect to such matters with the Office of Regulatory Policy and Planning and the Managing Director; and alerts applicable Commission officials of legislation which may impact upon the programs and activities of the Commission;

(5) Supervises, directs and appears as the legal representative of the Commission in all litigation matters in which the Commission, its officers or employees are named parties and which arise from actions taken in their official capacities;

(6) Serves as the legal representative of the Commission in administrative proceedings of other government agencies; and

(7) Manages the Commission's library and related services.

5.05 The *Office of the Secretary*

(1) Prepares the agenda and dockets of matters subject to action by the Federal Maritime Commission and prepares the minutes with respect to such actions;

(2) Receives and processes formal complaints and staff recommendations for investigation and hearing including: (a) Reviewing complaints for compliance with the Commission's Rules of Practice and Procedure; (b) assigning official docket numbers to such complaints and orders of investigation and hearing; (c) serving copies of such complaints and orders upon the respondent(s); (d) subsequent to Administrative Law Judges' decisions or other disposition of cases, ruling upon requests for enlargement of time for the filing of exceptions to decisions and replies thereto; and (e) processing all other motions and petitions to the Commission for action;

(3) Receives formal communciations, petitions, notices, documents and other instruments directed to the Chairman and/or the Commission and maintains official files and records with respect thereto;

(4) Disseminates information on the activities, functions, and responsibilities of the Federal Maritime Commission to the maritime industry, news media, general public and other government agencies;

(5) Provides procedural guidance, advice and assistance to the Office of Energy and Environmental Impact; and

(6) Manages the Commission's informal dockets activity.

(7) The Secretary serves as the Commission's Freedom of Information Act Officer and Privacy Act Officer.

5.06 The *Office of administrative Law Judges* holds hearings and renders decisions in formal rulemaking and adjudicatory proceedings as provided in the Shipping Act, 1916 and other applicable laws and other matters assigned by the Commission, in accordance with the Administrative Procedure Act and the Commission's Rules of Practice and Procedure.

5.07 The *Office of Regulatory Policy and Planning* is responsible for conducting strategic planning and economic analysis for the Commission. The purpose of the planning function is to ensure that the Commission correctly anticipates future developments in the maritime industry including economic, legislative, operational, and structural changes which affect the environment of international trade and ocean commerce, and is aware of the impact that current decisions will have in the future. The economic analysis function requires that the staff conduct economic research and studies so that the Commission is able to fulfull its statutory requirements on the basis of sound economic input. Specifically, the office:

(1) Conducts long-range policy planning research for the Commission;

(2) Develops on a periodic basis, but not less than annually, policy plans (3–5–10 years), including objectives and alternate strategies, for approval of the Chairman and the Commission;

(3) Conducts and develops, as directed by the Chairman with the assistance of Bureaus and Offices, as needed, special planning studies and analyses for the formulation of proposed Commission policy plans;

(4) Analyzes and reviews Commission policy decisions to ensure the continuing vitality of planning process;

(5) Monitors current Commission programs and activities for long-range policy planning implications;

(6) Maintains information network to ensure that Commission's policy planning is based upon valid assumptions regarding the environment of international trade and commerce as to the future and the implications of these assumptions for the Commission;

(7) Conducts research and economic studies necessary to the Commission in the fulfillment of its regulatory responsibilities and compiles, interprets, and analyzes economic data essential to the study of the competitive aspects of agreements and the reasonableness and impact of freight rate structures and levels;

(8) Studies the economic implications of shipping practices and trends of commodity movements worldwide;

(9) Analyzes costs attributable to the movement of cargoes in the oceanborne foreign and domestic offshore commerce of the United States; and

(10) Provides expert economic witnesses and other forms of economic assistance to other components of the Commission.

5.08 The *Bureau of Agreements* plans, develops, administers, and analyzes programs and activities in connection with the anticompetitive and cooperative arrangements and practices of common carriers by water, conferences of such carriers, freight forwarders and terminal operators in the foreign and domestic offshore commerce of the United States; and initiates recommendations, collaborating with the Bureau of Hearings and Field Operations and other elements of the Commission as warranted, for formal action and proceedings by the Commission. The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities.

The program activities of the Bureau of Agreements are carried out by the following offices:

(1) The *Office of Conferences* reviews and analyzes rate, conference and dual rate contract agreements, and modifications thereto, filed by common carriers by water in the domestic offshore and foreign commerce of the United States, pursuant to sections 14b and 15 of the Shipping Act, 1916; and reports required to be submitted by these parties, including minutes of conference meetings, shippers' request and complaint reports, and selfpolicing reports.

(2) The *Office of Carrier Relationships* reviews and analyzes transshipment (both exclusive and nonexclusive), joint service, container and equipment interchange, pooling, sailing, General Order 23, discussion, space charter, equal access and cooperative working arrangement agreements and modifications thereto, filed by common carriers by water in the domestic offshore and foreign commerce of the United States, pursuant to section 15 of the Shipping Act, 1916; and reports required to be submitted by these parties, including minutes of agreement meetings, operating reports and pooling statements.

(3) The *Office of Shoreside Agreements* reviews and analyzes terminal, terminal conference, agency, labor management, husbanding, passenger vessel, passenger vessel conference and freight forwarder cooperative working agreements, and modifications thereto, filed by parties in the domestic offshore and foreign commerce of the United States, pursuant to section 15 of the Shipping Act, 1916; and reports required to be submitted by these parties, including minutes of agreement meetings and shippers' request and complaint reports.

(4) *The Office of Trade Review*

a. Monitors and/or audits agreements approved by the Commission to determine whether the criteria under which the agreement was approved and current conditions warrant continued approval of such agreements and makes recommendations with respect thereto to determine that the parties remain in compliance with the agreements' terms;

b. Monitors trade conditions and practices and routinely informs Bureau management of developing trends and problems, developing plans for solution in coordination with the Bureau of Tariffs;

c. Performs special studies and prepares trade/carrier profiles, in coordination with the Bureau of Tariffs where necessary;

d. Conducts studies and surveys for the development of new or revised policies and standards, and rules and regulations with respect to the program activities of the Bureau;

e. Develops rulemaking proposals and analyzes all rule changes within the Bureau's scope of responsibilities;

f. Analyzes and prepares comments on legislative proposals;

g. Conducts a program to monitor the receipt, review and processing of all filings (agreements, petitions, reports, etc.) pertaining to the Commission's responsibility under 46 CFR 528 Self-Policing Requirements; and

h. Processes all complaints received by the Bureau and lends assistance where possible.

5.09 The *Bureau of Tariffs* plans, develops, administers and analyzes programs and activities in connection with the pricing by common carriers by water, conferences of such carriers and terminal operators in the foreign and domestic offshore commerce of the United States; reviews, files and rejects tariff filings; approves or disapproves special permission applications; and initiates recommendations, collaborating with the Bureau of Hearings and Field Operations and other elements of the Commission as warranted, for formal action and proceedings by the Commission. The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities.

The program activities of the Bureau of Tariffs are carried out by the following offices:

(1) The *Office of Foreign Tariffs*

a. Reviews, analyzes and maintains tariff filings of common carriers by water in the foreign commerce of the United States and conferences of such carriers subject to the regulatory jurisdiction of the Federal Maritime Commission, and accepts or processes the rejection of such filings;

b. Prepares recommendations for grant or denial of applications for special permission to file tariffs on less than statutory notice or for waiver of tariff filing rules and regulations;

c. With respect to improper or incorrectly filed tariffs, processes the rejection of such tariffs, issues letters of criticism, or recommends appropriate action thereon;

d. Initiates recommendations, collaborating with the Managing Director, the Bureau of Hearings and Field Operations, and other elements of the Commission for formal action by the Commission;

e. Operates a public reference room for tariff users;

f. Identifies controlled carriers in the U.S. foreign commerce, monitors their tariffs for compliance with U.S. statutes and Commission rules, and processes special permission applications submitted by these carriers; and

g. Reviews certifications of policies to combat rebating in the foreign commerce submitted annually by common carriers and tariffs of said carriers to determine that such tariffs have a provision against rebating.

(2) The *Office of Domestic Tariffs*

a. Reviews, analyzes and maintains tariff filings of common carriers by water in the domestic offshore commerce of the United States, conferences of such carriers, and other persons subject to the regulatory jurisdiction of the Commission, and accepts or processes the rejection of such filings;

b. Prepares recommendations for grant or denial of applications for special permission to file tariffs on less than statutory notice or for waiver of tariff filing rules and regulations;

c. With respect to improper or incorrectly filed tariffs, processes the rejection of such tariffs, issues letters of criticism, or recommends appropriate action thereon;

d. Initiates recommendations, collaborating with the Managing Director, the Bureau of Hearings and Field Operations and other elements of the Commission for formal action by the Commission; and

e. Recommends appropriate action for the prescription of reasonable maximum and minimum rates of common carriers by water engaged in the domestic offshore commerce of the United States and conferences of such carriers.

(3) The *Office of Financial Analysis*

a. Develops and revises the accounting regulations of the Commission, including the development of cost formulas and related financial reporting requirements to bring about accurate, uniform, and comprehensive disclosure of financial data to the Commission;

b. Analyzes the accounts, records, reports and financial statements of domestic offshore common carriers, and summarizes and prepares studies of such financial statements filed with the Commission;

c. Develops and administers a continuing program for the audit of financial records of domestic offshore common carriers;

d. Analyzes justification and makes recommendations in connection with rate changes by common carriers in the domestic offshore trades;

e. Prepares testimony and appears in proceedings where rates and/or costs are an issue;

f. Monitors rates offered to the Military Sealift Command for the carriage of military cargoes in the U.S. foreign commerce; and

g. Conducts financial studies, audits, and analyses for other offices of the Commission.

5.10 The *Bureau of Certification and Licensing* develops and administers programs and activities in connection with the certification of foreign and U.S. vessel owners and operators as to their financial responsibility to satisfy liability which may be incurred as a result of pollution under the provisions of the Federal Water Pollution Control Act, the Trans-Alaska Pipeline Authorization Act, the Outer Continental Shelf Lands Act Amendment of 1978 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980; the licensing of independent ocean freight forwarders under the provisions of the Shipping Act, 1916; and under Public Law 89–777 the certification of owners and operators of passengers vessels as to their financial responsibility to satisfy liability incurred by nonperformance of voyages or resulting from injury or death. The Bureau develops long-range programs, new or revised policies and standards, and rules and regulations with respect to its program activities.

The program activities of the Bureau of Certification and Licensing are carried out by the following offices:

(1) The *Office of Vessel Certification*

a. Administers statutory provisions with respect to evidence of financial responsiblity by owners and operators of vessels which may be subjected to liability to the United States and other parties for damages, including the cost of removal of oil or hazardous substances discharged into waters over which the United States has jurisdiction;

b. Processes applications for various types of Certificates of Financial Responsibility (Pollution) from vessel owners and operators who evidence their financial responsibility by means of self-insurance, surety bonds, certificates of insurance, guaranties or other methods acceptable to the Commission, and issues and revokes such Certificates;

c. Administers statutory provisions with respect to the financial responsibility of owners and operators of passenger vessels to meet liability for nonperformance of voyages and claims for injury or death on voyages;

d. Reviews and processes applications for Certificates of Financial Responsibility (Performance and Casualty) from passenger vessel owners and operators who evidence their financial responsibility by means of insurance, escrow account, guaranty, self-insurance and surety bond, separately for each type of Certificate;

e. Provides technical expertise, as required, to the Bureau of Agreements in connection with section 15 agreements involving passenger vessel operators;

f. Reviews periodic accounting reports and makes appropriate recommendations on the acceptability of guarantors and certificants who have qualified as self-insurers to assure that such remain financially stable, requesting assistance from the Office of Financial Analysis in the Bureau of Tariffs when necessary;

g. Recommends issuance, denial, revocation, modification or suspension of passenger vessel certificates;

h. Notifies certificants whose evidence of financial responsibility is being cancelled and makes appropriate recommendations in connection with guarantors and self-insurers who may no longer be acceptable;

i. Arranges field audits of passenger vessel operators' prepaid revenue accounts;

j. Makes appropriate recommendations with respect to violations of enabling statutes or regulations promulgated thereunder;

k. Maintains records, files, and listings of applicants, certificants, vessels, and underwriters for use internally and by other Government agencies;

l. Investigates and recommends acceptance or denial of persons or firms

wishing to qualify with the Commission as acceptable underwriters; and

m. Conducts studies and surveys for the development of new or revised policies and standards, and rules and regulations with respect to the program activities of the Office of Vessel Certification.

(2) The *Office of Freight Forwarders*

a. Reviews applications for the licensing of independent ocean freight forwarders, develops the information necessary to determine whether an applicant should be licensed, and makes appropriate recommendations as to the granting or denying of such applications, in accordance with the requirements of law and the rules, orders, and regulations of the Commission;

b. Reviews reports on the practices of licensed freight forwarders and makes appropriate recommendations with respect to activities which indicate possible violations of applicable statutes or Commission regulations;

c. Makes appropriate recommendations for formal action by the Commission;

d. Maintains a program on anti-rebating certification for freight forwarders in accordance with Commission rules;

e. Administers a surety bond program to ensure that each licensee maintains a valid bond in the required amount for the protection of the shipping public; and

f. Conducts studies and surveys for the development of new or revised policies and standards, and rules and regulations with respect to freight forwarder program activities.

5.11 The *Bureau of Hearings and Field Operations*

The Bureau of Hearings and Field Operations plans, develops, administers and analyzes programs and activities concerning all field operations and Commission investigative activities, legal representation in formal hearings, non-adjudicatory investigations, and other proceedings initiated by the Commission under the Shipping Act, 1916, and other shipping statutes. The Bureau is also responsible for overall coordination and management of the District Offices.

The program activities of the Bureau of Hearings and Field Operations are carried out by the following offices:

(1) The *Office of Hearing Counsel*

a. Acts as trial attorney in all formal administrative hearings, nonadjudicatory investigations, and other proceedings initiated by the Commission under the Shipping Act, 1916, and other shipping statutes; examines and cross-examines witnesses, prepares and files briefs, motions, exceptions and other legal documents and participates in oral arguments before the Administrative Law Judges and the Commission; and acts as prosecutor in Commission administrative proceedings where monetary assessments may be imposed for violations of the shipping statutes;

b. Negotiates and finalizes compromises and settlements with respect to civil penalties for violations of the shipping statutes which are not in issue in a formal Commission instituted proceeding;

c. Becomes a party to formal complaint proceedings where intervention is granted pursuant to standards set forth in the Commission's Rules of Practice and Procedure;

d. Through direct communication with field investigators, provides early attorney involvement in field investigations with respect to the evidence required to develop a case, at what stage sufficient evidence exists to take enforcement action, and the legal matters that should be addressed in the written investigative report;

e. Reviews all Enforcement Reports as they are submitted by the District Offices and makes recommendations as to possible disposition;

f. Acts as staff counsel furnishing consultative and advisory services and otherwise providing legal assistance to other bureaus and offices in formulating procedures to be followed in connection with program implementation and/or formal Commission proceedings;

g. Reviews and comments on recommendations of bureaus and offices recommending the institution of formal proceedings, nonadjudicatory investigations, and other proceedings under the shipping statutes, and prepares orders, notices and other documents in connection therewith; and

h. Serves, when requested by the General Counsel and under its direction, with the concurrence of the Managing Director, in matters of court litigation by or against the Commission arising from violations previously adjudicated by the Commission.

(2) The *Office of Investigations*

a. Coordinates, provides policy direction and monitors the activities of the District Offices;

b. Advises District Offices of all major programs and policy objectives of the Commission;

c. Directs, coordinates and monitors field investigations reformed by Commission personnel;

d. Reviews disclosures made directly to the Bureau of Hearings and Field Operations and recommends follow-up actions on such disclosures; and

e. Consults with, advises and otherwise assists the Office of Hearing Counsel and/or the Office of General Counsel in preparing for formal hearings before the Commission or actions in Federal Court.

f. The Chief of the Office of Investigations also serves as the Commission's Security Officer.

5.12 The *Office of Consumer Affairs*

(1) Develops and implements the Commission's Consumer Affairs Program within the framework of Commission policy and oversees the implementation of consumer related requirements within the Commission, including the Commission's Consumer Complaint System;

(2) Advises the Chairman, through the Managing Director, on significant issues of concern to the Commission's consumers and on the consumer interest in current and proposed policies, programs and decisions;

(3) Receives, coordinates and responds to, as appropriate, consumer complaints, suggestions and expressions of concern and contacts carriers and/or conferences and other persons to effect solutions to complaints;

(4) Works in coordination with the public relations activity to identify and publicize Commission policies, programs and activities of interest to the Commission's consumers; and

(5) Serves as liaison with the President's Special Assistant for Consumer Affairs.

5.13 The *Office of Energy and Environmental Impact*

(1) Ensures compliance with the National Environmental Policy Act of 1969 (NEPA) and the Energy Policy and Conservation Act of 1975 (EPACA);

(2) With respect to NEPA:

a. Examines Commission actions, not otherwise excluded by rule, to determine their potential environmental impact;

b. Prepares Environmental Assessments on Commission actions which may affect the quality of the human environment;

c. Issues "findings of no significant impact" in appropriate cases;

d. Prepares Draft and Final Environmental Impact Statements on actions which may significantly affect the quality of the human environment;

e. Issues appropriate notices of the foregoing to be published in the **Federal Register**;

f. Coordinates Commission actions regarding environmental matters and responds to inquiries from the public and Federal agencies as well as state and/or local governments; and

g. Submits Final Environmental Impact Statements to become part of the administrative record.

(3) With respect to EPACA:

a. Analyzes Commission regulatory actions, when appropriate, to estimate their potential impact on energy efficiency and conservation;

b. Prepares Energy Impact Statements, when necessary in coordination with Environmental Impact Statements; and publishes notices thereof in the **Federal Register**;

c. As necessary, submits Final Energy Impact Statements to become a part of the administrative record; and

d. Coordinates Commission actions with respect to energy matters.

5.14 The *Office of Personnel* plans and administers personnel management activities of the Commission in compliance with Federal laws and regulations; serves as staff advisor on personnel matters to executive management, supervisors, and individual employees; and initiates and implements programs designed to ensure a progressive personnel program within the Commission.

5.15 The *Office of Budget and Financial Management* formulates recommendations and interprets budgetary policies and programs; develops and presents budget requests and justifications; develops and administers fiscal plans and systems of internal control which provide accountability for public funds; ensures expenditures of appropriated funds are proper; has responsibility for all fiscal accounting activities including payroll accounts and accounts payable; determines and recommends proper levels of user fees; administers the Commission's travel and cash management programs; and is otherwise responsible for financial management policies, procedures and planning.

5.16 The *Office of Management Evaluation and Review*

(1) Provides management advice and expertise to support all levels of Commission management and serves in an internal management consulting role;

(2) Conducts internal management audits to assess efficiency and effectiveness in the use and management of Commission resources, and determines if laws, regulations and Commission policies are complied with;

(3) Develops and implements the Commission's manual and automated quantitative performance measurement systems which, among other things, collect, maintain and analyze workload data and provide workflow tracking abilities;

(4) Is responsible for the Commission's Records Management, Directives Management, and Forms Management Programs;

(5) Provides staff expertise on paperwork/information management and obtains O.M.B. clearance of reporting and/or recordkeeping requirements as required by appropriate law and regulations;

(6) Develops new management programs and systems, as necessary, to increase the ability of the Commission to perform its mission;

(7) Coordinates Commission implementation of certain government-wide programs such as the Emergency Preparedness and Federal Productivity Improvement Programs; and

(8) Manages word processing equipment assigned to the Office.

(9) The Director, Office of Management Evaluation and Review also serves as the Commission's Inspector General.

5.17 The *Office of Data Systems*

(1) Develops, implements, maintains, and documents automated data processing systems within the Federal Maritime Commission;

(2) Secures, maintains, and controls data and identifies alternate data sources;

(3) Controls and operates Commission leased and/or owned computer equipment;

(4) Develops specifications for equipment acquisitions, as well as technical material required for system development and operations;

(5) Instructs Commission employees in input data preparation and provides guidance in interpretation and use of output information;

(6) Provides special data reports, as needed, to the Commission and its staff;

(7) Provides advice and expertise, and suggests data processing uses to the Commission;

(8) Provides professional liaison outside the Commission; and

(9) Participates in the development of ADP contract specifications and negotiations, and monitors the contracts progress and quality.

5.18 The *Office of Administrative Services* provides administrative services and supplies for the Commission and its District Offices, including communication services, printing, binding, reproduction, mail services, procurement of supplies and equipment, space management, building services, safety programs, and records storage and retrieval; formulates guides, regulations, methods, and procedures governing the use of office services and facilities; and is responsible for liaison with respect to the security of Commission facilities. The Director, Office of Administrative Services serves as Director, Office of Small and Disadvantaged Business Utilization and is the Commission's Contracting Officer and Property Management Officer.

5.19 The *District Offices*

(1) Represent the Commission within their respective geographic areas;

(2) Provide liaison between the Commission and the industry and shippers conveying pertinent information regarding regulatory activities and problems and recommending courses of action and solution of problems as they relate to shippers and the Commission;

(3) Furnish information, advice, and counsel, and provide access to Commission public documents to interested persons;

(4) Receive and resolve informal complaints in accordance with the Commission's Consumer Affairs Program and guidance provided by the Director, Office of Consumer Affairs;

(5) Investigate violations of the shipping statutes, and the Commission's General Orders, receiving directions, guidance and assistance in the development of cases from the Bureau of Hearings and Field Operations;

(6) Upon request from the Bureau of Certification and Licensing, audit passenger vessel operators to determine the adequacy of performance bonds and the availability of funds to pay liability claims for death or injury, and assist in the background surveys of freight forwarder applicants to determine their fitness to be licensed by the Commission;

(7) Conduct compliance checks of freight forwarders;

(8) Conduct special surveys and studies, and recommend policies to strengthen enforcement of the shipping laws;

(9) Conduct container inspections to detect misdescriptions, misdeclarations, or other malpractices in the domestic offshore and foreign commerce;

(10) Maintain liaison with the U.S. Coast Guard, U.S. Customs, and other Federal and State agencies with respect to areas of mutual concern; and

(11) Provide assistance to the various bureaus and offices of the Commission as appropriate and when requested.

Section 6. Delegation of Authorities

6.01 Pursuant to section 105 of Reorganization Plan No. 7 of 1961, August 12, 1961, the Federal Maritime Commission hereby delegates the authorities set forth in sections 7, 8, 9, 10, 11, 12 and 13 of this Order to the officials designated therein, subject to the limitations prescribed in section 6.02, 6.03, 6.04 and 6.05 below.

6.02 The delegatees shall exercise the authorities delegated herein in a manner consistent with the established policies of the Federal Maritime Commission, and shall consult with legal staff where appropriate.

6.03 Subject to the limitations in sections 6.02, 6.04, and 6.05, the delegatees may in their discretion redelegate their authorities to subordinate personnel under their direction; provided that such redelegation is made in writing and notice is published in the **Federal Register**, and provided further that such redelegation does not grant the recipient the authority for subsequent redelegation. Under any authority so redelegated, the delegatees retain full rights to exercise any authorities and also retain full responsibility for actions taken by their subordinates.

6.04 Any action taken under delegated authority may be appealed to the Commission, in writing, within ten calendar days of the action.

6.05 Notwithstanding the delegations contained herein, the Commission retains its discretionary right of review as provided in section 105(b) of Reorganization Plan No. 7 of 1961.

Section 7. Specific Authorities Delegated to the Secretary

7.01 Authority to approve applications for permission to practice before the Federal Maritime Commission and to issue admission certificates to approved applicants.

7.02 Authority to prescribe a time limit less than twenty days from date published in the **Federal Register**, for the submission of written comments with reference to agreements filed pursuant to section 15 of the Shipping Act, 1916.

7.03 Authority, in the absence or preoccupation of the Managing Director and Deputy Managing Director, to sign travel orders, nondocketed recommendations to the Commission, and other routine documents for the Managing Director, consistent with the programs, policies, and precedents established by the Commission or the Managing Director.

7.04 Authority to prescribe a time limit less than twenty days for filing comments on notices of intent to • prepare an environmental assessment and notices of finding of no significant impact.

Section 8. Specific Authorities Delegated to the Director, Bureau of Agreements

8.01 Authority to approve, pursuant to section 15 of the Shipping Act, 1916, unprotested cooperative working arrangements and modifications thereto between independent ocean freight forwarders eligible to carry on the business of forwarding pursuant to section 44 of the Act.

8.02 Authority to approve, pursuant to section 15 of the Act as amended, unprotested modifications to terminal conference agreements and unprotested terminal leases, licenses, assignments, or other agreements of a similar character for the use of terminal property or facilities between persons subject to the Act, as amended. In instances where an agreement for the use of terminal property or facilities of the character defined herein grants renewal options without providing that the Commission be notified in the event that such options are exercised, this authority extends to the issuance of conditional approval, the condition of approval being that the agreement be modified to provide for notification to the Commission in the event that such options are exercised and refiled with the Commission.

8.03 Authority to determine whether agreements for the use or operation of terminal property or facilities, or the furnishing of terminal services, are within the purview of section 15.

8.04 Authority to approve unprotested transshipment agreements, and modifications thereto, covering transportation of cargo in the foreign commerce of the United States which are not unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, detrimental to the commerce of the United States, contrary to the public interest, or violative of the Shipping Act, 1916. Such agreements should include the:

(1) Complete name of the parties entering into the arrangement, specifically setting forth the portion of the trade that each party will cover, including ports or areas of origin and destination, cargo to be carried and ports or ranges of ports at which cargo will be transshipped;

(2) Responsibility of parties for establishing and filing the applicable through rates, rules, regulations, and other tariff matters;

(3) Provisions for the apportionment of the through revenue and transshipment expenses stated in percentages or specific dollar amounts;

(4) When applicable, provision for application and apportionment of other expenses such as wharfage, special handling, lighterage, tonnage dues, surcharges, and other such charges assessed by a governmental authority;

(5) When desired by the parties, provision for indemnification between the parties for liabilities incurred from loss, damage, delay, or misdelivery of goods;

(6) Provisions for the termination of the agreement within a stated notice period; and

(7) Provisions for the submission to the Federal Maritime Commission for approval of any modification or addition to the agreement.

8.05 Authority to approve the termination of section 15 agreements between common carriers by water and conferences of such carriers engaged in the foreign and domestic commerce of the United States, and between other persons subject to the Act, after publication of notice of intent to terminate in the **Federal Register**, when such terminations are (1) requested by the parties to the agreements, or (2) deemed to have occurred when it is determined that the parties are no longer engaged in concerted activities requiring section 15 approval and official inquiries and correspondence cannot be delivered to the parties.

8.06 Authority, not including changes in voting procedures, to approve unprotested modifications to approved section 15 agreements which are filed to reflect changes in the name of a country or port; increase or decrease the trade areas within the general geographic scope of the approved existing agreements, provided that such increases or decreases do not involve foreign-to-foreign trade; or reflect non-substantive changes in language, procedures, or administration.

8.07 Authority to approve, pursuant to section 15, unprotested passenger agency agreements and modifications thereto, and container interchange agreements and modifications thereto between ocean common carriers.

8.08 Authority to approve modifications to section 15 agreements when such modifications are filed in accordance with the requirements of Commission rules or general order and are clearly in compliance with the criteria and/or intent of such rules or general order, and require modification of the filed amendment to the extent necessary to conform to the requirements of such rules or general order.

8.09 Authority to review and determine the validity of alleged or suspected violations involving agreements between common carriers and/or other persons subject to the Shipping Act, exclusive of formal complaints, of the shipping statutes and rules and regulations of the Commission by common carriers by water in the domestic offshore or the foreign commerce of the United States, terminal

operators, freight forwarders, and other persons subject to the provisions of the shipping statutes; authority to determine corrective action necessary with respect to violations and conduct negotiations and obtain compliance by the violating parties, except where violations involve major questions of policy or major interpretations of statutes, or orders, rules, and regulations of the Commission, or acts having material effect upon the commerce of the United States; and authority to recommend to the Commission the initiation of formal proceedings or other actions with respect to such alleged or suspected violations.

8.10 Authority to issue notices of expiration of agreements for failure to have more than one party as a signatory when: (1) Notification has been received of the withdrawal of the next to last party to an agreement, and (2) notification has not been received of the addition of another party to the agreement prior to the effective date of the next to last party's withdrawal.

8.11 Authority to approve those classes of unprotested agreements, and modifications thereto, which, pursuant to section 35 of the Shipping Act, 1916, are specifically exempted from the approval requirements of that Act, but which, notwithstanding the exemption, have been filed for approval.

Section 9. Specific Authorities Delegated to the Director, Bureau of Tariffs

9.01 Authority, except as provided in subsection 9.02 of this Order with respect to a controlled carrier subject to the Ocean Shipping Act of 1978 (Pub. L. 95–483), to approve or disapprove Special Permission applications submitted by domestic offshore carriers or carriers in the foreign commerce of the United States, or conferences of such carriers, for relief from statutory and/or Commission tariff requirements.

9.02 Authority to approve or disapprove Special Permission applications submitted by a controlled carrier subject to the provisions of the Ocean Shipping Act of 1978 (Pub. L. 95–483) for relief from statutory and/or Commission tariff requirements, pursuant to section 18(c)(3) of the Shipping Act, 1916, when such requested relief is shown by the controlled carrier to be needed in order to:

(1) Meet the immediately filed rate of a competing carrier;

(2) Reinstate or correct a rate which was omitted or altered due to obvious or demonstrated clerical error or oversight; or

(3) Institute a rate to facilitate the movement of cargo when carriers serving the applicable trade are not able to transport such cargo or when no service exists.

9.03 Authority to request controlled carriers to file justifications for existing or proposed rates, charges, classifications, rules or regulations, and review responses to such requests for the purpose of recommending to the Commission that a rate, charge, classification, rule or regulation be found unlawful and, therefore, requires Commission action under section 18(c)(4).

9.04 Authority to issue notices of intent to cancel inactive tariffs of carriers in the foreign and domestic offshore trades, after a diligent effort has been made to locate the carrier without success, or if the carrier has advised the Commission that it no longer offers a common carrier service but refuses to cancel its tariff upon written request; and to cancel such tariff if, within 30 days after publication, the carrier does not furnish reasons why such tariff should not be cancelled.

9.05 Authority to accept or reject tariff filings of common carriers in the foreign and domestic offshore commerce of the United States or conferences of such carriers for failure to meet the requirements of the statutes or the Commission, for lack of completeness and clarity of the rules and regulations governing the tariffs, or noncompliance with special permission or other orders of the Commission.

9.06 Authority to approve or disapprove applications as specified in General Order 11, Revised, for extensions of time for filing (512.2(c)), alternative data (512.2(d)) and waiver of detailed filing requirements (512.2(e)).

9.07 Authority to develop, prescribe, and administer programs to assure compliance with the provisions of the shipping statutes of all persons subject thereto, including without limitations those programs for: the submission of regular and special reports, information, and data; the conduct of a plan for the field audit of activities and practices of common carriers by water in the domestic offshore trade and the foreign commerce of the United States, conferences of such carriers, terminal operators, freight forwarders, and other persons subject to the shipping statutes; and the conduct of rate studies.

9.08 Authority to review and determine the validity of alleged or suspected violations involving rates, charges, rules, regulations and practices, exclusive of formal complaints, of the shipping statutes and rules and regulations of the Commission by common carriers by water in the domestic offshore or foreign commerce of the United States, terminal operators, and other persons subject to the provisions of the shipping statutes; authority to determine corrective action necessary with respect to violations and conduct negotiations and obtain compliance by the violating parties, except where violations involve major questions of policy or major interpretations of statutes, or orders, rules, and regulations of the Commission, or acts having material effect upon the commerce of the United States; and authority to recommend to the Commission, with respect to the foregoing, the initiation of formal proceedings or other actions with respect to such alleged or suspected violations.

Section 10. Specific Authorities Delegated to the Director, Bureau of Certification and Licensing

10.01 Authority to: (a) Approve within the framework of prescribed Commission policy and criteria, applications for independent ocean freight forwarder licenses and issue or reissue or transfer licenses to persons, partnerships, corporations, or associations desiring to engage in the business of ocean freight forwarding; (b) issue a letter stating that the Commission intends to deny an application unless within 20 days applicant requests a hearing to show that denial of the application is unwarranted; (c) deny any application for a freight forwarder license where an applicant has received a letter of intent to deny and, within notice period, has not requested a hearing; (d) rescind letters of intent to deny or grant extensions of the time specified in such letters; (e) revoke the license of a freight forwarder upon the request of the licensee; (f) upon receipt of notice of cancellation of any bond, notify the licensee in writing that its license will automatically be suspended or revoked, effective on the bond cancellation date, unless a new or reinstated bond is submitted and approved prior to such date, and subsequently order such suspension or revocation for failure to maintain a bond; (g) approve extensions of time to licensed freight forwarders, in which to furnish the Commission the name(s) and ocean freight forwarding experience of the managing partner(s) or officer(s) who will replace the qualified partner or officer upon whose qualifications the original licensing was approved; and (h) approve changes in an existing licensee's organization.

10.02 Authority to: (a) Approve applications for Certificates of Financial Responsibility (Water Pollution) and issue of reissue such certificates; (b)

issue a written notice to an applicant stating that the Commission intends to deny an application, indicating the reasons therefor, and advising the applicant of the time for requesting a hearing where provided for under section 542.12 of General Order 40; (c) deny any application for a Certificate where an applicant has received a letter of intent to deny, and has not submitted a timely request for hearing on the denial; (d) rescind notices of intent to deny an application and grant extensions of time for filing a request for hearing; (e) revoke a Certificate upon request of the certificant; (f) revoke a Certificate for reasons set forth in sections 542.12(a)(2), (a)(4) and (a)(5) of General Order 40; and (g) exercise the various grants, waivers and requests relating to the filing of financial data by self-insurers and guarantors pursuant to the provisions of section 542.8(b) of General Order 40.

10.03 Authority to: (a) approve applications for Certificates of Financial Responsibility (Alaska Pipeline), and to issue or reissue such Certificates; (b) issue a written notice to an applicant stating that the Commission intends to deny an application, indicating the reason therefor, and advising the applicant of the time for requesting a hearing where provided for under section 543.8 of General Order 37; (c) deny any application for a Certificate where the applicant has been issued the written notice of intent to deny, and has not submitted a timely request for a hearing on the denial; (d) rescind notices of intent to deny an application, and grant extensions of the time within which a request for a hearing may be filed; (e) revoke a Certificate upon request of the certificant; (f) revoke a Certificate for the reasons set forth in sections 543.8(a)(2), (a)(4) and (a)(5) of General Order 37; and (g) exercise the grants and requests related to filing of financial data by self-insurers and guarantors pursuant to section 543.6 of General Order 37.

10.04 Authority to: (a) approve applications for Certificates of Financial Responsibility (Outer Continental Shelf), and to issue or reissue such Certificates; (b) issue a written notice to an applicant stating that the Commission intends to deny an application, indicating the reasons therefor, and advising the applicant of the time for requesting a hearing where provided for under section 544.11 of General Order 41; (c) deny any application for a Certificate where the applicant has been issued a written notice of intent to deny, and has not submitted a timely request for a hearing on the denial; (d) rescind notices of intent to deny an application, and grant extensions of time within which a request for a hearing may be filed; (e) revoke a Certificate upon request of the certificant; (f) revoke a Certificate for the reasons set forth in sections 544.11(a)(2), (a)(4), and (a)(5) of General Order 41; and (g) exercise the various grants, requests, and waivers related to filing of financial data by self-insurers and guarantors pursuant to the provisions of section 544.8 of General Order 41.

10.05 Authority to review and determine the validity of alleged or suspected violations, exclusive of formal complaints, of the shipping statutes and rules and regulations of the Commission by freight forwarders; authority to determine corrective action necessary with respect to violations except where violations involve major questions of policy or major interpretations of statutes, or orders, rules, and regulations of the Commission, or acts having material effect upon the commerce of the United States; and authority to recommend to the Commission the initiation of formal proceedings or other actions with respect to such alleged or suspected violations.

10.06 Authority to: (a) Approve applications for Certificates (Casualty) and to issue, reissue, or amend such Certificates; (b) reissue or amend Certificates (Performance); (c) issue a written notice to an applicant stating that the Commission intends to deny an application for a Certificate (Performance and/or Casualty), indicating the reason therefor, and advising applicant of the time for requesting a hearing as provided for under sections 540.8 and 540.26 of General Order 20; (d) deny any application for a Certificate (Performance and/or Casualty) where the applicant has been issued the written notice of intent to deny, and has not submitted a timely request for a hearing on the denial; (e) rescind notices of intent to deny an application, and grant extensions of the time within which a request for hearing may be filed; (f) issue written notice to a certificant stating that the Commission intends to revoke, suspend, or modify a Certificate (Performance and/or Casualty), indicating the reason therefor, and advising of the time for requesting a hearing as provided for under §§ 540.8 and 540.26 of General Order 20; (g) revoke, suspend or modify a Certificate (Performance and/or Casualty) where the certificant has been issued the written notice of intent to revoke, suspend or modify, and has not submitted a timely request for hearing; (h) rescind notices of intent to revoke, suspend or modify a Certificate (Performance and/or Casualty) and grant extensions of time within which a request for hearing may be filed; (i) revoke a Certificate (Performance and/or Casualty) upon request of or acquiescence of the certificant; (j) revoke a Certificate (Performance and/or Casualty) which has expired; (k) notify a certificant when a Certificate (Performance and/or Casualty) has become null and void in accordance with sections 540.8(a) and 54026(a) of General Order 20; and (l) grant or deny requests for extension of time pursuant to General Order 20.

Section 11. Specific Authority Delegated to Director, Office of Energy and Environmental Impact

11.01 Authority, in appropriate cases, to publish in the **Federal Register** notices of intent to prepare an environmental assessment.

Section 12. General Authority Delegated to the Managing Director, Secretary, General Counsel, and Chief Administrative Law Judge

12.01 Authority to exercise all functions and take all actions necessary to direct and carry out the duties and responsibilities assigned to the Managing Director, Office of the Secretary, Office of the General Counsel, and Office of Administrative Law Judges, in accordance with their functional assignments as heretofore prescribed in this Order.

Section 13. Public Requests for Information and Decisions

13.01 General

(1) 5 U.S.C. 552(a)(1)(A) requires that every agency separately state and currently publish in the **Federal Register**, for the guidance of the public, descriptions of its central and field organizations and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions.

(2) Section 5 of this Order complies with that portion of the statute which requires the publication of a description of the Federal Maritime Commission's central and field organization.

(3) Accordingly, there is hereby stated and published for the guidance of the public the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions. For this purpose, the officials hereinafter designated may be contacted by

telephone, in writing, or in person, at the Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

13.02 The *General Counsel* will provide information and decisions, and will accept and respond to requests relating to the program activities of the Office of the General Counsel. Any document, report, or other submission required to be filed with the Federal Maritime Commission by statute or the Commission's rules and regulations relating to the specific functions of the Office of the General Counsel, as set forth in section 5.04 of this Order, shall be filed with or submitted to the General Counsel.

13.03 The *Secretary* will provide information and decisions, and will accept and respond to requests, relating to the program activities of the Office of the Secretary. Any document, report, or other submission required to be filed with the Federal Maritime Commission by statute or the Commission's rules and regulations relating to the specific functions of the Office of the Secretary, as set forth in section 5.05 of this Order, shall be filed with or submitted to the Secretary.

13.04 The *Chief Administrative Law Judge* will provide information and decisions, and will accept and respond to requests, relating to the program activities of the Office of Administrative Law Judges. Any document, report, or other submission required to be filed with the Federal Maritime Commission by statute or the Commission's rules and regulations relating to the specific functions of the Office of Administrative Law Judges, as set forth in section 5.06 of this Order, shall be filed with or submitted to the Chief Administrative Law Judge.

13.05 The *Directors of the following Bureaus and Offices* will provide information and decisions, and will accept and respond to requests relating to the program activities of their respective Bureaus and Offices as set forth in this Order; provided, however, that the dissemination of such information or decisions is not prohibited by statute or the Commission's Rules of Practice and Procedure.

(1) Office of Regulatory Policy and Planning
(2) Bureau of Agreements
(3) Bureau of Tariffs
(4) Bureau of Certification and Licensing
(5) Bureau of Hearings and Field Operations
(6) Office of Consumer Affairs
(7) Office of Energy and Environmental Impact
(8) Office of Personnel
(9) Office of Budget and Financial Management
(10) Office of Management Evaluation and Review
(11) Office of Data Systems
(12) Office of Administrative Services

13.06 The *Directors of the Atlantic, Gulf, Pacific, Great Lakes, Mid-Atlantic, and Puerto Rico District Office, and the senior Investigators of the Miami and Los Angeles Sub-Offices*, will provide information and decisions to the public within their geographic areas, or will expedite the obtaining of information and decisions from headquarters, relating to the program activities of the District Offices as set forth in this Order. The addresses of these Offices and Sub-Offices are as follows:

Atlantic District—Director, Atlantic District, Federal Maritime Commission, 6 World Trade Center, Suite 614, New York, New York 10048–0949
Great Lakes District—Director, Great Lakes District, Federal Maritime Commission, 610 Canal Street, Chicago, Illinois 60607
Gulf District—Director, Gulf District, Federal Maritime Commission P.O. Box 30550, 610 South Street, New Orleans, Louisiana 70190
Miami Sub-Office—Federal Maritime Commission, 1001 North America Way, Room 102, Miami, Florida 33132
Mid-Atlantic District—Director, Mid-Atlantic District, Federal Maritime Commission, 1100 L Street, NW., Room 9102, Washington, D.C. 20573
Pacific District—Director, Pacific District, Federal Maritime Commission, 525 Market Street, 25th Floor, San Francisco, California 94105
Los Angeles Sub-Office—Federal Maritime Commission, P.O. Box 3184, U.S. Customs House Building, Terminal Island Station, San Pedro, California 90731
Puerto Rico District—Director, Puerto Rico District, Federal Maritime Commission, U.S. Dsitrict Courthouse, Federal Office Building, Room 762, Carlos Cardon Street, Hato Rey, Puerto Rico 00917.

13.07 Any document, report or other submission required to be filed with the Federal Maritime Commission by statute or the Commission's rules and regulations relating to the specific functions of the Bureaus and Offices shall be filed with or submitted to the Director of such Bureau or Office.

Section 14. Effect on Other Orders

14.01 This Order supersedes Commission Order Number 1 (Revised) dated September 15, 1973, and all amendments and supplements thereto, and Commission Order Number 201.1 (Revised), dated June 30, 1975, and all amendments and supplements thereto.

Alan Green, Jr.,

Chairman.

[FR Doc. 81–37059 Filed 12–28–81; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggreived by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than January 19, 1982.

A. Federal Reserve Bank of Cleveland (Harry W. Hunning, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

Mellon National Corporation, Pittsburgh, Pennsylvania (insurance underwriting activities in Delaware for credit insurance associated with loans generated in Louisiana): To engage through its wholly-owned indirect subsidiary, Mellon Life Insurance Company, in insurance underwriting activities through the partial reinsuring of credit life and credit accident & health insurance associated with consumer loans made by Freedom Financial Services Corporation, a subsidiary of Mellon National Corporation, in the State of Louisiana. These activities would be conducted

from the Mellon Life offices located in Wilmington, Delaware, and would be associated with the credit life and credit accident & health insurance generated from the consumer loans made by Freedom Financial Services Corporation at its office located in 2800 Hessmer Street in Metairie, Louisiana.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

Dominon Bankshare Corporation, Roanoke, Virginia (mortgage financing, servicing, and insurance activities; Virginia): To engage, through its subsidiary, Dominion Bankshares Mortgage Corporation, in mortgage banking activities of originating residential, commercial, industrial, and construction loans for its own account and for sale to others, and servicing such loans for others, and writing credit life, credit accident and health, and mortgage redemption insurance in connection with such mortgage loans. These activities will be conducted from an office in Fredericksburg, Virginia, and will service the city of Fredericksburg, Virginia, and the counties of Culpeper, Spotsylvania, Stafford, King George, and Caroline.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

Fidelity Southern Corporation, Tucker, Georgia (financing and insurance activities; Georgia): To engage through its subsidiary, Hebersham Mortgage, Inc., in first and second mortgage loan activities to serve such first and second mortgage loans and to act as insurance agent or broker for the sale or credit life, credit accident and health insurance directly related to extensions of credit by a bank or bank related firm or directly related to the provision of other financial services by a bank or such bank related firm. These activities would be conducted from an office located in Tucker, Georgia, serving the fourteen counties comprising the greater Atlanta, Georgia, metropolitan area.

D. **Other Federal Reserve Banks:** None.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-36977 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

Banca Commerciale Italiana; Formation of Bank Holding Company

Banca Commerciale Italiana, Milan, Italy, 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 100 percent (less directors' qualifying shares) of the voting shares of LITCO Bancorporation of New York, Inc., Garden City, New York. The factors that are considered in acting on the application are set forth in section 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 of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 20, 1982. 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.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37008 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

Great Lakes Financial Resources, Inc.; Formation of Bank Holding Company

Great Lakes Financial Resources, Inc., Blue Island, Illinois, 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 80 percent or more of the voting shares of First National Bank of Blue Island, Blue Island, Illinois. The factors that are considered in acting on the application are set forth in section 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 of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 20, 1982. 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.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37009 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

Greater Jersey Bancorp.; Acquisition of Bank

Greater Jersey Bancorp., West Paterson, New Jersey, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Anthony Wayne Bank, Wayne, New Jersey. The factors that are considered in acting on the application are set forth in section 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 of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 20, 1982. 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.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37010 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

Ogden-Saratoga Corp.; Formation of Bank Holding Company

Ogden-Saratoga Corporation, Downers Grove, Illinois, 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 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to First Security Bank of Downers Grove, Downers Grove, Illinois. The factors that are considered in acting on the application are set forth in section 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 of Chicago.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 20, 1982. 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.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37011 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

Old Stone Corp.; Proposed Acquisition of Pacific-Southern Mortgage Trust

Old Stone Corporation, Providence, Rhode Island, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2), for permission to acquire 100 per cent of the assets and liabilities of Pacific-Southern Mortgage Trust, San Diego, California.

Applicant would engage in the activities of mortgage banking and real property leasing on a full payout basis for the sole and limited purpose of liquidating the acquired assets. Applicant would not make any new mortgage loans as a result of this transaction. These activities would be performed from offices of Applicant's subsidiary in Providence, Rhode Island, and the geographic area to be served generally is the entire United States, but primarily western, south-western and middle southern United States. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than January 20, 1982.

Board of Governors of the Federal Reserve System, December 21, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37012 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

Pioneer Bancshares Corp.; Formation of Bank Holding Company

Pioneer Bancshares Corporation, Shreveport, Louisiana, 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 at least 80 percent of the voting shares of Pioneer Bank & Trust Company, Shreveport, Louisiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Pioneer Bancshares Corporation, Shreveport, Louisiana, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Zachary Taylor Life Insurance Company, Shreveport, Louisiana.

Applicant states that the proposed subsidiary would engage in credit-related insurance agency activities. These activities would be performed from offices of Applicant's subsidiary in Shreveport, Louisiana and the geographic area to be served is the State of Louisiana. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board Approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas.

Any views or requests for hearing should be submitted in writing and received by the Secretarty, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 20, 1982.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc 81-37013 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

Provident National Corp.; Acquisition of Bank

Provident National Corporation, Philadelphia, Pennsylvania, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to acquire 100 percent of the voting shares, less directors' qualifying shares, of Provident of Delaware Bank, Wilmington, Delaware. The factors that are considered in acting on the application are set forth in section 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 of Philadelphia. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 20, 1982. 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.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37014 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

RCB Corp.; Formation of Bank Holding Company

RCB Corporation, Sacramento, California, 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 80 percent or more of the voting shares of River City Bank, Sacramento, California. The factors that are considered in acting on the application are set forth in section 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 of San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 20, 1982. 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.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37015 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

Republic of Texas Corp.; Acquisition of Bank

Republic of Texas Corporation, Dallas, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares,less directors' qualifying shares, of RepublicBank Barton Creek, National Association, Austin, Texas, a *de novo* bank. The factors that are considered in acting on the application are set forth in section 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 of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 19, 1982. 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.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37016 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

Snook Bancshares, Inc.; Formation of Bank Holding Company

Snook Bancshares, Inc., Snook, Texas, 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 100 percent of the voting shares of First Bank of Snook, Snook, Texas. The factors that are considered in acting on the application are set forth in section 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 of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 20, 1982. 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.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37017 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

Texas Commerce Bancshares, Inc.; Acquisition of Bank

Texas has Commerce Banchares, Inc., Houston, Texas, applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Texas Commerce Bank-Cypress Station, National Association, Houston, Texas, a proposed new bank. The factors that are considered in acting on the application are set forth in section 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 of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 20, 1982. 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.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37018 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

United Missouri Bancshares, Inc.; Acquisition of Bank

United Missouri Banchares, Inc., Kansas City, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Paris Savings Bank, Paris, Missouri. The factors that are considered in acting on the application are set forth in section 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 of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 20, 1982. 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.

Board of Governors of the Federal Reserve System, December 21, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-37019 Filed 12-28-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[E-81-37]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Arkansas Public Service Commission involving electric rates, Docket 81-144U.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Arkansas Public Service Commission involving the application of the Arkansas Power and Light Company for an increase in its electric rates in Docket 81-144U.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration (GSA), and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Defense shall add GSA to its service list in this case so that GSA will receive copies of testimony, briefs, and other Department of Defense filings.

Dated: December 17, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-36968 Filed 12-28-81; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79N-0047]

Alevaire; Final Decision Following Formal Evidentiary Public Hearing in Adjudicatory Proceeding

Correction

In FR Doc. 81-32638 appearing at page 56043 in the issue of Friday, November 13, 1981, make the following changes:

(1) On page 56043, middle column, first complete paragraph, eighteenth line, insert "spray" in between "nasal" and "apparatus".

(2) On page 56045, middle column, in the footnote material at the bottom, second complete paragraph, second line, the word "Group" should be changed to read "Croup".

(3) On page 56047, third column, in the footnote at the bottom, "(S-181-198)" should be changed to read, "(S-181-98)".

BILLING CODE 1505-01-M

[Docket No. 78N-0067]

Guides for Naturally Occurring and Accelerator-Produced Radioactive Material

AGENCY: Food and Drug Administration.

ACTION: Notice..

SUMMARY: The Food and Drug Administration (FDA) is announcing that a June 1981 revised document entitled, "Guides for Naturally Occurring and Accelerator-Produced Radioactive Materials (NARM)" (FDA 81-8025) developed by the Conference of Radiation Control Program Directors, is now complete and available for public review. The Guides were developed through cooperation by FDA's Bureau of Radiological Health (BRH), the Environmental Protection Agency (EPA), and the Nuclear Regulatory Commission (NRC) to assist the various States in establishing uniform standards for evaluating the safety of sources and products discussed in the Guides and for distributing these products.

ADDRESSES: The Guides are available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for single copies of the Guides identified by the title of the document and the Docket number appearing in the heading of this notice may be sent to the Bureau of Radiological Health (HFX-28), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Paper or microfiche copies of the Guides may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, Order No. PB-81-238842. (Paper price code and price; A05, $9.50; Microfiche price code and price; A01, $3.50; Price subject to change.)

FOR FURTHER INFORMATION CONTACT: Jeannine T. Lewis, Bureau of Radiological Health (HFX-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2850.

SUPPLEMENTARY INFORMATION: The manufacturer, distribution, and use of products containing naturally occurring and acceleration-produced radioactive materials are not covered by the Atomic Energy Act of 1954, as amended, and, therefore, are not regulated by NRC. Rather, the regulation of these sources and devices has been left to the discretion of each State, and the degree of regulation consequently varies from State to State.

In this notice, FDA is announcing that a June 1981 revised document entitled, "Guides for Naturally Occurring and Accelerator-Produced Radioactive Materials (NARM)" (FDA 81-8025) developed by the Conference of Radiation Control Program Directors, is now complete and available for public review. The Guides were developed through cooperation by FDA, EPA, and NRC to assist the various States in establishing uniform standards for evaluating the safety of sources and products discussed in the Guides and for distributing these products.

Under the Public Health Service Act (42 U.S.C. 241, 243), FDA encourages cooperation among the States to protect the public against radiation hazards. The Guides facilitate this cooperation. The Guides also are compatible with existing guidance and procedures developed by NRC for other radioactive materials, i.e., source, special nuclear, and byproduct materials, and by EPA, which is responsible for establishing Federal radiation guidance. In addition, the Guides reflect recommendations and suggestions of the American National Standards Institute, Inc., and the National Council on Radiation Protection and Measurements.

The Guides are intended to provide, through the cooperative efforts of the States and the Federal government, the basis of State programs for standardizing the safety evaluation and distribution of sources and products subject to the Guides.

The Guides also assist manufacturers, assemblers, and distributors in matters of radiation safety for naturally occurring and accelerator-produced radioactive material sources and devices. The Guides are designed to be used in conjunction with the Radioactive Materials Reference Manual (RMRM) and the Suggested State Regulations for Control of Radiation (SSRCR). A copy of each of the latter two documents has been placed on file in the Dockets Management Branch under the Docket number appearing in the heading of this document.

This June 1981 second edition of the Guides supersedes the July 1977 report (FDA 77-8025). It adds new Guides 13 and 14, reflects several amendments to existing Guides, and places the relevant rationale information immediately after the respective Guide. Guide 13 provides standard licensing conditions for specific licenses issued to each manufacturer, assembler, or distributor. Guide 14 provides a list of main points to be observed when conducting onsite surveys of manufacturers, assemblers, or distributors. "Scope" revisions, "labeling" changes, or "definition" amendments were made to Guides 3, 7,

8, 10, and 12. Rationales for Guides 13 and 14 were also added.

During the development stage of these revised Guides, drafts were sent for review and comments and for informational purposes to State and Federal agencies that have an interest and responsibilities in radiation control. FDA anticipates that the Guides will be reviewed annually by representatives of the Conference of Radiation Control Program Directors and appropriate Federal agencies and updated as necessary. Future revisions of the Guides also will be announced by notice in the **Federal Register.**

The Guides are available for public review in the Dockets Management Branch (address above). Copies of the Guides may be obtained from BRH or NTIS (address above).

Interested persons may at any time submit written comments and recommendations regarding the June 1981 revision of the Guides. Comments should be identified with the docket number appearing in brackets in the heading of this document and should be submitted to the Dockets Management Branch (address above). To be helpful, recommendations should be accompanied by appropriate rationale and background data that clearly establish the administrative, scientific, technical, and public health bases for the recommendations. Any written comments or suggestions received about this matter will be collated and kept on file for consideration by those individuals given responsibility for review and revision of the Guides.

Dated: December 21, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-36859 Filed 12-28-81; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0231]

Philips Roxane, Inc.; Oxytocin Injectable; Refusal To Approve NADA Supplement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine (BVM), Food and Drug Administration, is issuing a final order refusing to approve a supplement to a new animal drug application (NADA) for oxytocin injection. This action is being taken because the sponsor has elected not to avail itself of an opportunity for a hearing on the refusal to approve the application.

EFFECTIVE DATE: December 27, 1981.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Bureau of Veterinary Medicine (HFV-232), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 18, 1981 (46 FR 46396), the Director of the Bureau of Veterinary Medicine (the Director) provided a notice of opportunity for a hearing to Philips Roxane, Inc., on BVM's refusal to approve a supplement to an NADA. Philips Roxane, holder of approved NADA 99-169 for oxytocin injection as a prescription drug, submitted a supplement to its application requesting approval for the over-the-counter marketing of the drug labeled for milk letdown in sows after farrowing. The Director stated that for approval, the applicant must establish that oxytocin injection can be used safely by laymen for milk letdown in sows after farrowing, and that directions for use in the proposed labeling are reasonably certain to be followed in paractice (21 U.S.C. 360b(d)). The Director concluded that the applicant had not met these statutory requirements.

By letter dated October 16, 1981, Philips Roxane stated that it did not intend to request a hearing on the refusal to approve their application. Therefore, under section 512(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(d)(1)) and § 514.200 (21 CFR 514.200), the Director is issuing this final order refusing to approve the supplement to NADA 99-169 for the over-the-counter marketing of oxytocin injection.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84).

Dated: December 18, 1981.

Gerald B. Quest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-36859 Filed 12-28-81; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0392]

Meeting; Availability of Draft Standards Policy for Medical Devices

Note.—This document originally appeared in the **Federal Register** for December 24, 1981. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Food and Drug Administration.

AGENCY: Food and Drug Administration.

ACTION: Notice of public meeting and availability of draft standards policy for medical devices.

SUMMARY: The Food and Drug Administration (FDA) announces a meeting to allow public discussion of a draft standards policy for medical devices developed by the Bureau of Medical Devices. FDA also announces the availability of this draft standards policy.

DATES: The meeting will be held on January 26, 1982, from 9 a.m. to 5 p.m.; requests to make a formal presentation at the meeting should be submitted to the contact person by December 31, 1981; summaries of any presentations to be made at the meeting should be submitted to the contact person by January 19, 1982.

ADDRESSES: The meeting will be held in the auditorium on the main floor (Rm. 1073) of the Health and Human Services—North Building, 330 Independence Ave. SW., Washington, D.C. 20201. FDA's draft standards policy is on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1751, and copies of the draft standards policy may be obtained by contacting that office. Requests should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Neal Dunning, Bureau of Medical Devices (HFK-60), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7184.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to allow public discussion of a draft standards policy for medical devices that have been classified into class II (performance standards). The standards policy has been developed by FDA's Bureau of Medical Devices. The meeting is to be conducted under provisions of FDA's administrative practices and procedures regulations (21 CFR 10.65(b)).

This meeting is intended by FDA to encourage public discussion of FDA's policies concerning medical device standards and promote cooperation among all persons affected by the regulation by FDA of medical devices. The meeting will begin with a series of formal presentations on medical device standards policy made by interested persons who may respond to this notice. FDA suggests that the presentations be limited to 10 minutes or less each. FDA will schedule the presentations on a

first-come first-served basis. Any person who wishes to make a formal presentation at the meeting should notify the contact person by December 31, 1981; and, by January 19, 1982, the person should submit to the contact person the person's name, address, business affiliation, and a summary of the planned presentation. The meeting will be open to the public. Seating will be available on a first-come first-served basis. To the extent that time permits, interested persons who did not request an opportunity to make a formal presentation will be given an opportunity to make an oral presentation at the conclusion of the meeting. Copies of FDA's draft standards policy are available from the Dockets Management Branch (address above).

Dated: December 21, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-36698 Filed 12-21-81; 2:51 pm]

BILLING CODE 4160-01-M

Health Services Administration

Funding Reductions in Fiscal Year 1982

AGENCY: Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces: (1) Factors that the Health Services Administration (HSA) will use in determining which Community Health Center (CHC) projects to fund, and (2) restrictions on the type of project activities that will be eligible for Federal support under the CHC program. A reduced level of authorization of appropriations for section 330 of the Public Health Service (PHS) Act in the recently enacted Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) is the reason for the announcement of these factors and restrictions.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bohrer, Acting Associate Bureau Director, CHC, Bureau of Community Health Services, HSA, Room 7A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone number 301 443-2260.

SUPPLEMENTARY INFORMATION: As a result of the new authorization level for Fiscal Year 1982 provided for in the Omnibus Budget Reconciliation Act of 1981, funds available to support the CHC projects funded under the authority of section 330 of the PHS Act will be significantly reduced. The CHC program regulations specify the considerations the Secretary will use, taking into account the funds available for grants, in deciding which projects to fund (42 CFR 51c.305). These regulations also describe the Secretary's authority to determine the amount of grants and the uses of project funds (42 CFR 51c.106 and 51c.107). The purpose of this notice is to explain how the Secretary, acting through the HSA, will exercise his discretion in carrying out these provisions.

In order to most effectively use the limited amount of Fiscal Year 1982 funds which are anticipated to be available for this program, the HSA has identifed some currently supported types of projects and activities for which funds may be significantly reduced or eliminated in Fiscal Year 1982 without seriously impairing the goals of the CHC program.

The projects and activities identified by the HSA include the following:

Operational grants for projects which received only planning grants in Fiscal Year 1981.

Grants for projects which do not fully meet all productivity/effectiveness measures or clinical standards (44 FR 14640; March 13, 1979).

That part of any grant awarded in Fiscal Year 1982 used to support:

(1) Supplemental health services (as defined in section 330(b)(2)); and

(2) Services other than "primary medical care," which the HSA defines for these purposes as including only the following: General internal medicine, family medicine, general pediatrics, and obstetrics and gynecology. Inpatient hospital services provided through prepaid and other CHCs are not "primary medical care" services as defined herein.

Because of the significant reductions in available funds, greater emphasis will be placed on the relative need for a project's services than may have occurred in the past. It must be demonstrated by the applicant that the population to be served has a need for these services. Applicants for grants must include the results of an assessment of the need for their services. This assessment must be based upon, but need not be limited to, the factors for assessing need set forth in 42 CFR 51c.1-2(b)(1)-(4). In order to make these relative need determinations, the HSA will take into consideration the results of the assessment, the quartile into which a project area's index of medical underservice falls and other relevant factors.

New statistical data are available which indicate that many areas now designated as medically underserved areas (MUAs) are no longer medically underserved. Consequently, it is expected that those areas will lose their designations as MUAs. Any CHC serving an area that is no longer a MUA will not be eligible for further funding.

It should be emphasized that these changes are based upon the reduced Fiscal Year 1982 authorization level in the Omnibus Budget Reconciliation Act. It may be necessary to make further changes in funding priorities based upon the actual amount of the final appropriation.

Dated: December 22, 1981.

John H. Kelso,

Acting Administrator, Health Services Administration.

[FR Doc. 81-36975 Filed 12-28-81; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Irrigation Operation and Maintenance Charges; Water Charges and Related Information on the Crow Irrigation Project, Montana

This notice of operation and maintenance rates and related information is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in 209 DMB and redelegated by the Assistant Secretary—Indian Affairs to the Area Directors in 10 BIAM 3, and by authority delegated to the Project Engineer and to the Superintendents by the Area Director in 10 BIAM 7.0, Sections 2.70-2.75. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9), and also under 28 CFR 191.1(e).

Pursuant to final rule published on June 14, 1977, in 42 FR 30361, this notice sets forth changes to the operation and maintenance charges and related information applicable to the Crow Irrigation Project, Crow Agency, Montana. These charges were proposed pursuant to the authority contained in the Acts of August 1, 1914, and March 7, 1928, (38 Stat. 583, 25 U.S.C. 385; 45 Stat. 210, 25 U.S.C. 387).

Interested persons were given 30 days in which to submit written comments, views or arguments regarding the proposed rates and related provisions. Several comments were received during the 30-day comment period, from the three Water Districts. As a result two meetings were held to supply the District Water Users additional information on the proposed increases. As the result of the meetings the three

Water Districts agreed to accept the negotiated rates shown below. In compliance with the above, the operation and maintenance charges for the lands under the Crow Irrigation Project, Montana for the season of 1981 and subsequent years until further notice, are hereby fixed as follows:

Unit	Rate/ acre
Two Leggins	[1] $5.83
Bozeman Trail	2.20
All Regular Units	7.57
All Units under Willow Creek Storage	0.30
Two Leggins Drainage	1.25

[1] Or minimum of $20 per land owner.

Blake T. Smith,

Acting Superintendent, Crow Indian Agency.

[FR Doc. 81-36906 Filed 12-28-81; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[INT FEIS 81-53]

Final Westside Salem Timber Management Environmental Impact Statement: Availability of FEIS

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Interior has prepared a final environmental impact statement for the Westside Salem EIS area. The proposal involves implementing a 10-year timber management plan on public lands on the Columbia and Alsea-Rickreall Sustained Yield Units of the Salem District in western Oregon.

Public reading copies will be available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 18th and C Streets NW., Washington, DC 20240.
Bureau of Land Management, Office of Public Affairs, 729 NE. Oregon Street, Portland, OR 97208.
Bureau of Land Management, Salem District Office, 1717 Fabry Road SE., Salem, OR 97302.
Oregon State Library, State Library Building, Salem, OR 97310.
Oregon State University Library, Government Document Section, Corvallis, OR 97331.
Portland State University Library, 724 SW. Morrison, Portland, OR 97201.
University of Oregon Library, Government Document Section, Eugene, OR 97403.
Corvallis Public Library, 645 NW. Monroe, Corvallis, OR 97330.
Linn-Benton, Community College Library, Albany, OR 97321.
Corvallis Public Library, 645 NW. Monroe, Corvallis, OR 97330.
Dallas Public Library, 187 SW Court, Dallas, OR 97338.
Hillsboro Public Library, 775 SE. 10th, Hillsboro, OR 97123.
St. Helens Public Library, The Plaza, St. Helens, OR 97051.
Tillamook County Library, 210 Ivy, Tillamook, OR 97141.
McMinnville Public Library, 230 W. 2nd, McMinnville, OR 97218.
Multnomah County Library, 801 SW. 10th, Portland, OR 97205.
Newport Public Library, 251 W. Olive, Newport, OR 97365.
Salem Public Library, 585 Liberty SE., Salem, OR 97302.

A limited number of copies are available upon request from the Bureau of Land Management, Oregon State Office, or the Salem District Office, at the above addresses.

Comments on the FEIS will be accepted by the Salem District Manager until Janaury 31, 1982.

Dated: December 18, 1981.

Philip C. Hamilton,

Chief, Division of Planning and Environmental Coordination.

[FR Doc. 81-36910 Filed 12-28-81; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Mines

Advisory Committee on Mining and Mineral Resources and Research; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I) and the Office of Management and Budget's Circular No. A 63, Revised.

The Advisory Committee on Mining and Mineral Resources and Research will meet from 9:00 a.m. to 5:00 p.m. (or completion of business) on January 21 and 22, 1982, in room 1042A, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 20240.

The meeting will deal with the following prinicipal subjects:

1. Welcome of New Committee Members
2. Review of Minutes—Meeting of July 1 and 2, 1980
3. Current Status of Program
4. Fiscal Year 1981 Actions
5. Recommendations Re: Fiscal Year 1982
6. New Business

The meeting of this committee is open to the public. Approximately 25 visitors can be accommodated on a first come, first serve basis. Written statements concerning the subjects are welcome.

Visitors who expect to attend should make this known no later than January 14, 1982, to Dr. John Morgan, Chief Staff Officer, Bureau of Mines, Room 1038, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 20240, phone (202) 643-1330.

Dated: December 23, 1981.

John Morgan,

Chief Staff Officer.

[FR Doc. 81-37086 Filed 12-28-81; 8:45 am]

BILLING CODE 4310-02-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 18, 1981. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by January 13, 1982.

Sally G. Oldham,

Acting Keeper of the National Register.

ALABAMA

Barbour County

Eufaula, *Kiels-McNab House,* W. Washington St.

Jefferson County

Bessemer, *Kartus-Vance House (Dr. Thomas McAdory Owen House)* 510 N. 18th St.

Madison County

Huntsville vicinity, *Flint River Place,* 1997 Jordan Rd.
Meridianville vicinity, *Otey, William Madison, House,* S of Meridianville
New Market, *Whitman-Cobb House, Winchester Rd.*

Mobile County

Mobile, *Tschiener House (Damus School) 1120 Old Shell Rd.*

Morgan County

Decatur vicinity, *Westview,* S of Decatur

Pickens County

Aliceville vicinity, *Ball, Parks E., House,* NW of Aliceville

Sumter County

Gainesville, *Mobley, Col. Green G., House,* Webster and Pearl Sts.

OHIO

Franklin County

Columbus, *Union Station Arch,* Arch Park

WISCONSIN

Dane County

Madison, *State Office Building*, 1 W. Wilson St.

Jefferson County

Lake Mills, *Fargo, L. D., Public Library*, 120 E. Madison St.

[FR Doc. 81-37005 Filed 12-28-81; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 347 (Sub No. 1)]

Coal Rate Guidelines; Nationwide

AGENCY: Interstate Commerce Commission.

ACTION: Interim Decision.

SUMMARY: This is an interim decision in the development of ratemaking standards for the transportation of market dominant coal. Certain final guidelines on a number of cost issues are established. The Commission has decided not to adopt the proposed ton/ton-mile method for allocating system common costs and to retain its commitment to the concept of differential pricing. The Commission also has decided how it will handle fixed plant and equipment additives and deferred taxes in future proceedings. Comments are sought on other related cost issues. No final decision has been made on the treatment of environmental and energy issues and on a precise methodology for prescribing maximum rates. All maximum rate prescriptions on coal will be based on case-by-case adjudication at least until remaining issues are resolved.

DATES: Comments must be received on or before February 12, 1982.

COPIES: This decision may be obtained from the Office of the Secretary, Room 2227, Interstate Commerce Commission, Washington, D.C. 20423.

ADDRESS: An original and 15 copies of any comments should be sent to: Bureau of Accounts, Interstate Commerce Commission, Room 6133, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Ronald S. Young, Phone (202) 275-7565
or
Leslie Selzer, Phone (202) 275-7627.

SUPPLEMENTARY INFORMATION: On May 17, 1978 [43 FR 22151], the Commission issued an Advance Notice of Proposed Guidelines for the establishment of maximum rate guidelines on Western Coal. After receiving public comment, we closed the lead investigation and issued on November 18, 1980 [45 FR 80370, December 4, 1980] in Ex Parte No. 347 (Sub-No. 1) a Notice of Proposed Guidelines for the establishment of maximum rate guidelines for coal—nationwide. A number of significant changes from the advance notice were offered. This included: (1) expanding the scope of the investigation to include all coal, (2) a shift from the ratio to the ton/ton-mile method of allocating system constant costs, (3) elimination of fixed plant and equipment additives except in unusual circumstances, (4) allowing the substitution of actual locomotive fuel and maintenance expenses and roadway maintenance expense in gross ton miles (GTM) for system averages, and (5) permitting a return on deferred income taxes for ratemaking purposes. Public comments were received in response to this notice. Based on those comments we have decided not to use the ton/ton-mile method for allocating constant costs. We have reconsidered our proposal to limit the use of fixed plant and equipment additives, and we have decided to permit a return on deferred income taxes. Finally, we have also decided to permit the substitution of actual locomotive fuel and maintenance expenses and roadway maintenance expenses in GTM costs, if available, on a case-by-case basis. We have not reached a decision on the environmental and energy issues and the methodology for prescribing maximum rates.

In this interim decision the Commission is seeking further comments on the use of the Ramsey principle for establishing differential pricing, as well as certain cost issues including the use of fixed plant and equipment additives and recognition of prospective investments.

(49 U.S.C. 10321, 10701a, 10704 and 5 U.S.C. 553)

Decided: December 16, 1981.

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam. Commissioner Gresham concurring in part, will issue a separate expression at a later time.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-37027 Filed 12-28-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-No. 72)]

Lamoille Valley Railroad Co., Exemption for Contract Tariff ICC-LVRC-C-0003

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirement of 49 U.S.C. 10713(e). This contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Donald J. Shaw or
Jane F. Mackall (202) 275-7656.

SUPPLEMENTARY INFORMATION: The Lamoille Valley Railroad Company (LVRC) filed a petition on December 11, 1981, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e), to permit the LVRC to file its contract tariff ICC-LVRC-C-0003 on one day's notice to become effective December 21, 1981. Because of an error in the effective date, the contract tariff had to be refiled. Thus, the petition could not be acted upon by the requested date. The contract involves the storage of woodpulp for the shipper at Morrisville, VT.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 nor more than 60 days' notice. There is no provision for waiving this requirement. CF former section 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. The shipper has a major mill at Shawmut, ME producing woodpulp with a daily output of over 900 tons. The shipper has experienced an increasing shortage of storage space at its mill in recent months, well above its normal inventory. With total available storage space at the mill of about 3000 tons, this capacity will be reached very shortly due top the inability of receiving points to accept deliveries. The shipper must find an immediate means of securing additional storage space or else curtail the operation of its Shawmut mill. We find this to be the type of exceptional circumstance which warrants granting a provisional exemption.

LVRC's contract tariff ICC-LVRC-C-0003 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking these exemptions under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the Federal Register.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10505).

Dated: December 21, 1981.

By the Commission, Division 2, Commissioners Gresham, Gilliam, and Taylor. Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-37028 Filed 12-28-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-74)]

Louisville and Nashville Railroad Exemption for Contract Tariff ICC-L&N-C-0008

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirement of 49 U.S.C. 10713(e). This contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall (202) 275-7656.

SUPPLEMENTARY INFORMATION: The Louisville and Nashville Railroad (L&N) filed a petition on December 16, 1981, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e), to permit the L&N to file its contract tariff ICC-L&N-C-0008 on one day's notice to become effective December 17, 1981. The petition was not filed in time to be acted on by the requested date. The contract involves the movement of coal over the lines of the L&N from an origin coal mine in east Kentucky to Mobile, AL, for export.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 nor more than 60 days' notice. There is no provision for waiving this requirement. CF former section 10762(d)(I). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

This interim contract covers a 3-month period during which test shipments of 300,000 tons each will be exported to determine if foreign buyers are satisfied with the quality of the coal, prior to finalizing a multi-year coal purchase contract. It is imperative that the short-term test contract become operative immediately, in order not to delay or jeopardize the placing of the subsequent long-term contract. As indicated, the contract is of limited scope and the shipper's ability to meet its contractual obligations may be disrupted if the carrier is forced to file its tariff on the basis of the usual 30-day notice period. Imposition of the usual requirements are not necessary to protest shipper from an abuse of market power since the contract will not impair the L&N's ability to provide regular service to its other shippers. The coal shipper will probably furnish open hopper cars and in any case, the short term of the contract will not produce a significant impact on L&N's ability to meet common carrier obligations.

L&N's contract tariff ICC-L&N-C-0008 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking these exemptions under 49 U.S.C 10505(c) if protests are filed within 15 days of publication in the Federal Register.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10505)

Dated: December 21, 1981.

By the Commission, Division 2, Commissioners Gresham, Gilliam, and Taylor. Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-37030 Filed 12-28-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-82 (Sub-4)]

New Procedures in Motor Carrier Revenue Proceedings; Inclusion of Niagara Frontier Tariff Bureau, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: Niagara Frontier Tariff Bureau, Inc. is directed to submit with its cost justification statements for general increases a continuing Traffic Study and Appendix A and Appendix B financial data for a carrier frame consisting of all Instruction 27 carriers and other carriers who meet the Instruction 27 requirements, except that they do not file financial reports with the I.C.C., which derive $1 million or more in annual operating revenues from issue traffic and whose issue revenues are at least five percent of their system revenues. Niagara is further directed to calculate the U.S. and Canadian mix of expenses for all carriers to develop cost projections. Such cost projections should be based on the appropriate U.S. and Canadian indices, as fully described below.

DATES: Comments must be received on or before January 28, 1982. Effective February 12, 1982.

FOR FURTHER INFORMATION CONTACT: Jane Mackall, (202) 275-7656, or Raymond Hobbs, (202) 275-7457.

SUPPLEMENTARY INFORMATION: By decision served October 15, 1979, we found that valid statistical data does not exist to subject Niagara Frontier Tariff Bureau, Inc. (Niagara) to the present Ex Parte No. MC-82 procedures, and that the use of the Ex Parte No. MC-82 methodology would not produce representative data. We ordered Niagara to comply with alternative cost justification procedures in general rate increase proposals. We further directed that a statistician and a cost analyst be assigned to meet with and assist Niagara to develop such alternative procedures.

Our staff accordingly studied Niagara's operations, as well as data collection and development procedures, to determine how Niagara could capture costs of its international operations. The reporting guidelines which follow,

applicable to international traffic are the result of these studies.

Carrier Frame

Niagara has demonstrated that a statistically adequate carrier frame can be developed using all Instruction 27 carriers and other carriers who meet the Instruction 27 requirements (except that they do not file financial reports with the I.C.C.) which derive $1 million or more in annual operating revenues from issue traffic and whose issue revenues are at least five percent of their system revenues. This carrier frame, hereinafter referred to as the five percent frame, covers more than 60 percent of all revenues on a carried basis and was demonstrated to be adequately representative of all issue traffic by weight of shipment, type of rate (class and commodity) and territory. Niagara has further demonstrated that the five percent frame is responsive to shifts in financial ratios, and is thus adequate for development of traffic study information and cost/revenue relationships. Niagara points out, however, that the five percent frame is still deficient insofar as its application to development of revenue need projections. The deficiency lies in the mix of U.S. and Canadian costs in the frame which is different from the mix of costs that all international traffic has. Niagara's studies in this area indicated that 62 percent of all costs were U.S. and 38 percent were Canadian. The five percent frame developed by Niagara understates the percentage of U.S. costs. While this percentage mix does not impair the cost projections on an annual basis to a large degree, short-term cost increases are substantially affected. Therefore, Niagara proposes to use the five percent frame for the purposes of development of the Continuing Traffic Study (CTS), the Appendix A and B ratios and the development of operating ratios, while using the expense mix of all carriers for the projection of the U.S. and Canadian mix of expenses.

We agree that the weighting of revenue need projections by the expense mix of all carriers is superior to the usage of the five percent frame. Nevertheless, this expense mix may be subject to fluctuations. Therefore, we direct Niagara to apply the expense mix studies subject to the same time requirements as those applicable to the use of the CTS, as outlined in Section 1104.2(a) in Ex Parte No. MC-82, *supra.*

Continuing Traffic Study

Niagara is directed to maintain a CTS for the five percent frame for both the development of cost/revenue relationships as well as the impact of any rate filing. The CTS shall be subject to all requirements of Ex Parte No. MC-82, *supra,* except as expressly stated herein.

Financial Data

Niagara is directed to submit both Appendix A and Appendix B information for the five percent frame. This information will be filed on an aggregate basis, in order to protect the confidentiality of Canadian carrier data; however, underlying working papers will be made available as necessary for inspection by this Commission.

Non-Labor other than Fuel—the Canadian Industry Selling Price Index (ISPI) less the Petroleum Refineries Index (PRI) published by statistics Canada, projected by a least squares log linear regression. The ISPI is constructed in a similar manner to the Producers' Price Index (PPI) published by the Bureau of Labor Statistics (BLS).

Niagara's source data and cost projection procedures are acceptable for purposes of anaylsis of cost justification statements. Niagara is directed to include the source data for the Canadian indices used for cost projections in its submissions, since these data are not readily available to this Commission.

We note that Niagara proposes to base parts of its cost projections on data developed by this Commission. The use of such data is acceptable for development of Niagara's cost justification statements. However, if in the future this data is no longer produced by the Commission, Niagara is directed to follow procedures outlined in Ex Parte No. MC-82, *supra,* for development of alternative data.

Regulatory Flexibility Act: Pursuant to 5 U.S.C. 605(b) the Secretary of the Commission has certified that the requirements of the Regulatory Flexibility Act do not apply to this final decision since its adoption in this proceeding will not have a significant economic impact on a substantial number of small businesses. The additional requirements and data required by this decision is primarily directed to establishing attenative procedures for filing justification statements in general rate increase proposals and will require little or no additional input from the carriers, large or small, represented by the Niagara Frontier Tariff Bureau, Inc. This action is a direct result of the rules promulgated in Ex Parte No. MC-82, *New Procedures in Motor Carrier Revenue Proceedings* Title 49 of the Code of Federal Regulations, Chapter 10, Sub Chapter B, Part 1104.

We find that a Notice of Proposed Rulemaking is not necessary to adopt these reporting requirements for Niagara for two reasons. First, the reporting requirements are not substantially different from those outlined in Ex Parte No. MC-82 for all carriers. We have received and taken into consideration public comment on those procedures. Second, these reporting requirements were arrived at in consultation with and were agreed to by Niagara. Nevertheless, in keeping with out belief that any rule can benefit from public scrutiny, we are requesting that the public study the decision and report, within 30 days after publication in the **Federal Register,** any suggested changes.

If the Commission concludes, after reviewing the comments, that it is necessary to reconsider this decision, a further notice will be published in the **Federal Register.** Otherwise, the provisions of this decision will become effective February 12, 1982.

Cost/Revenue Data

The cost data being developed by Niagara to produce cost/revenue relationships is based on a cost study being conducted by Niagara. While preliminary data are sufficiently refined to allow analysis of cost/revenue relationships, Niagara is directed to continue to refine this data. These refinements should produce more accurate costs in the following areas:

1. Line-haul costs of traffic moving via piggyback or owner-operators.
2. Terminal service costs of traffic moving via owner-operators.
3. Costs incurred solely on international traffic.
4. Costs of customs clearance operations.

Cost Projections

Niagara has developed cost increase factors for U.S. and Canadian operations. The cost projections are based on the following sources:

United States:

Labor—cost projections developed by Trucking Management, Inc. and labor studies conducted by both the Middle Atlantic and Central States Bureau.

Fuel—the fuel index developed by this Commission.

Non-Labor other than Fuel—the industry non-labor study projected by a least squares log linear regression.

Canada:

Labor—cost projections developed by Motor Transport Industrial Relations Bureau, and labor studies conducted by Niagara. These studies are similar to the U.S. studies.

Fuel—cost projections developed from Niagara's study of major international carriers. This study conforms with the Commission's Ex Parte No. 311, *Expedited Procedures for Recovery of Fuel Costs.*

This decision will not significantly affect the quality of the human environment or conservation of energy resources.

Dated: December 7, 1981.

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-37026 Filed 12-28-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

OPY-2-245

Decided: December 16, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 16502 (Sub-23), filed December 2, 1981. Applicant: ROBINSON TRUCK LINE, INC., P.O. Box 737, West Point, MS 39773. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205, 601-948-8820. Transporting *machinery and metal products,* between points in Lowndes County, MS, on the one hand, and, on the other, points in AR, CT, IL, IN, IA, KY, MA, MI, MN, NY, OH, PA, TN and WI.

Note.—Applicant intends to tack this authority with its existing authority.

MC 45813 (Sub-13), filed December 4, 1981. Applicant: THE DUMFORD TRUCKING CO., 6437 Germantown Rd., Middletown, OH 45042. Representative: James E. Dumford (same address as applicant), 513-422-3653. Transporting *scrap or waste paper,* between points in the U.S., under continuing contract(s) with Diamond International Corporation, of Middletown, OH.

MC 52793 (Sub-688), filed December 3, 1981. Applicant: BEKINS VAN LINES CO., 333 S. Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312-547-2184. Transporting *data processing equipment and parts,* between points in the U.S. (except AK and HI), under continuing contract(s) with ITT Courier Terminal Systems, Inc. of Tempe, AZ.

MC 95813 (Sub-22), filed November 30, 1981. Applicant: SHUMAKER TRUCKING CO., 601 U.S. Route 15 North, Dillsburg, PA 17019-1696. Representative: David Shumaker (same address as applicant), 717-432-9617. Transporting *refractories and refractory products* between points in the U.S. in and east of MN, IA, AR and LA.

MC 107012 (Sub-757), filed December 4, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant), 219-429-2234. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Tandem Computers, Inc. of Cupertino, CA.

MC 108973 (Sub-19), filed December 1, 1981. Applicant: INTERSTATE EXPRESS, INC., 2334 University Ave., St. Paul, MN 55114. Representative: Sperling R. Englehart (same address as applicant), 612-645-4527. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Jeno's, Inc., of Duluth, MN, Cherry Central Cooperative, Inc., of Traverse City, MI, and Morton Salt, of Chicago, IL.

MC 117993 (Sub-17), filed November 19, 1981. Applicant: FRUITBELT TRUCKING, INC., 12 Smith St., St. Catharines, Ontario, Canada. Representative: Robert D. Gunderman, Can-Am Bldg., 101 Niagara St., Buffalo, NY 14202 716-854-5870. Transporting *food and related products,* between ports of entry on the International Boundary line between the U.S., and Canada in NY and MI, on the one hand, and, on the other, those points in the U.S., in and east of ND, SD, NE, CO, OK, and TX, and points in WA and CA.

MC 126313 (Sub-11), filed December 2, 1981. Applicant: CHO-BO, INC., P.O. Box 38, Rte. Kennedy, St. Georges (Beauce County), Quebec, Canada G5Y 5C0. Representative: Frank J. Weiner, 15 Court Sqaure, Boston, MA 02108, 617-742-3530. Transporting *general commodities* (except classes A and B explosives), between points in Somerset and Kennebec Counties, ME.

MC 128302 (Sub-25), filed December 11, 1981. Applicant: THE MANFREDI

MOTOR TRANSIT CO., 14841 Sperry Rd., Newbury, OH 44065. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 42215, 614–228–1541. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Algan, Inc., of Chagrin Galls, OH.

MC 134453 (Sub-29), filed December 3, 1981. Applicant: STERNLITE TRANSPORTATION CO., Winsted, MN 55359. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118, 612–457–6889. Transporting *lumber and wood products*, between points in the U.S., under continuing contract(s) with Empire Wholesale Lumber Co., of Akron, OH.

MC 140302 (Sub-6), filed December 2, 1981. Applicant: AMERICAN TANK TRANSPORT, INC., 6350 Ordnance Point Rd., Baltimore, MD 21225. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, 201–572–5551. Transporting *commodities in bulk*, between points in the U.S., under continuing contract(s) with Union Oil Company of California, of Clark, NJ.

MC 140902 (Sub-19), filed December 2, 1981. Applicant: DPD, INC., 3600 N.W. 82nd Ave., Miami, FL 33166. Representative: Harry J. Jordan, Suite 502, Solar Bldg., 1000–16th St. N.W., Washington, DC 20036, 202–783–8131. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S.

MC 141093 (Sub-1), filed November 30, 1981. Applicant: BERKSHIRE BULK SERVICE, INC., The Port of Albany, Albany, NY 12202. Representative: Neil D. Breslin, 11 North Pearl St., Albany, NY 12207, (518) 434–1136. Transporting *petroleum and petroleum products*, between points in Albany and Rensselaer Counties, NY, on the one hand, and, on the other, points in MA, CT, VT and PA.

MC 141932 (Sub-51), filed December 7, 1981. Applicant: POLAR TRANSPORT, INC., 176 King St., Hanover, MA 02339. Representative: Alton C. Gardner (same address as applicant), 617–871–2550. Transporting (1) *building materials*, between points in the U.S., (2) *garments*, between Braintree and Randolph, MA, on the one hand, and, on the other, points in AR, FL, GA, MS, NC, SC, TN, TX and VA, (3) *pulpwood and fiberboard and aluminum and paper novelties*, between points in OH, on the one hand, and, on the other, points in IL, IN, KY, MI, NJ, PA and TN, (4) *such commodities* as are dealt in or used by manufacturers, converters and distributors of paper and paper products, between points in the U.S. and (5) *materials and supplies* used in the maunfacturing of textile mill fabrics and finished goods, between points in Androscoggin and Kennebec counties, ME, on the one hand, and, on the other, points in AR, ZA, GA, NY, NC and SC.

MC 146343 (Sub-13), filed December 7, 1981. Applicant: SOUTHERN EXPRESS CORPORATION, 505 South Ocean Blvd., Pompano Beach, FL 33062. Representative: Warren V. Picillo, Jr., 2 Sawyer Drive, Conventry, RI 02816, 401–822–0878. Transporting *geneard commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Essex Chemical Corporation of Clifton, NJ.

MC 147492 (Sub-7), filed December 7, 1981. Applicant: MEL MOTOR EXPRESS, INC., P.O. Box 29058, New Orleans, LA 70189. Representative: James T. Harmon, III (same address as applicant), 504–246–8221. Transporting *beer*, between points in the U.S. (except AK and HI), under continuing contract(s) with Neal W. Kaye, Inc. of Harahan, LA.

MC 149302 (Sub-4F), filed November 27, 1981. Applicant: EXPRESS TRANSPORT, INC., 247 Moorland St., Fall River, MA 02724. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043, (617) 749–6500. Transporting *general commodities* (except classses A and B explosives, household goods, and commodities in bulk), between Philadelphia, PA, and New York, NY, and points in MA, RI, and NJ, on the one hand, and on the other, points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 151142 (Sub-7), filed December 3, 1981. Applicant: H & H TRANSPORTATION, INC., 1701 E. Main St, Newark, OH 43055. Representative: Andrew Jay Burkholder, 275 E. State St., Columbus, OH 43215, 614–228–8575. Transporting *food and related products*, between Detroit and Warren, MI, and points in Coshocton County, OH, on the one hand, and, on the other, points in the U.S.

MC 151622 (Sub-2F), filed December 4, 1981. Applicant: SERVICE TRUCKING, INC., P.O. Box 158, Eustis, FL 32726. Representative: K. Edward Wolcott, 235 Peachtree St., NE Suite 1200, Atlanta, GA 30303, (404) 522–2322. Transporting *such commodities* as are dealt in or used by distributing of engines, and parts, accessories and supplies for engines, between points in the U.S., under continuing contract(s) with Southeast Diesel Corporation of Miami, FL.

MC 152082 (Sub-9), filed December 4, 1981. Applicant: R.C. SERVICE, INC., P.O. Box 823, Bensenville, IL 60106. Representative: Daniel C. Sullivan, 10 South LaSalle St., Suite 1600, Chicago, IL 60603, 312–263–1600. Transporting *such commodities* as are dealt in or used by printers and distributors of printed matter, between points in the U.S., under continuing contract(s) with R.R. Donnelley & Sons Company of Chicago, IL.

MC 153293 (Sub-2), filed December 2, 1981. Applicant: PREMIUM PLASTICS, INC., 250 Forrest St., Metuchen, NJ 08840. Representative: Harold L. Reckson, 33–28 Halsey Rd., Fair Lawn, NJ 07410, 201–791–2270. Transporting *plastic materials*, between points in the U.S., under continuing contract(s) with Amoco Chemical Corp. of Chicago, IL.

MC 154612 (Sub-1), filed November 24, 1981. Applicant: ROBERT T. LEVESQUE, d.b.a. R. J. LEVESQUE & SONS, 9 Mayhill Rd., Monson, MA 01057. Representative: Patrick A. Doyle, 40 Sky Ridge Lane, Springfield, MA 01128, 413–783–0442. Transporting *heavy equipment and road construction materials*, between points in MA, ME, NH, VT, CT, RI, NY, NJ, and PA.

MC 155332, filed November 30, 1981. Applicant: BELL LUXURY LIMOUSINE, 100 Sunshine Lane, Reno, NV 89502. Representative: Michael W. Dyer, 50 W. Liberty, Suite 610, Reno, NV 89501, (702) 322–4200. Transporting *passengers and their baggage, in the same vehicle with passengers*, in special and charter operations, limited to the transportation of not more than seven passengers in any one vehicle, not including the driver thereof, between points in Washoe, Douglas, Carson City and Storey Counties, NV, and CA.

MC 158503, filed December 7, 1981. Applicant: DICK MILES CANINE TRANSPORTATION, INC., 749 East Logan Drive, Longwood, FL 32750. Representative: Norman A. Cooper, 145 West Wisconsin Ave., Neenah, WI 54956, 414–722–2848. Transporting *racing dogs*, between points in FL, on the one hand, and, on the other, points in CT, MA, NH, RI, and VT.

MC 159462, filed November 27, 1981. Applicant: HADLEY MOORES AND HAMES DEWEVER, d.b.a. M & D COMPANY, Box 296, Eliot, ME 03903. Representative: John F. O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187, (617) 696–7610. Transporting *sectional construction barges, machinery, metal products, lumber and wood products, clay, concrete, glass and*

stone products between points in CT, DE, MA, MD, ME, NC, NH, NJ, NY, OH, PA, RI, SC, VA, VT, WV and DC.

MC 159492, filed November 30, 1981. Applicant: JOSEPH A. BEAULIEU, 1 Belair Drive RFD #3, Colchester, VT 05446. Representative: Joseph A. Beaulieu (same address as applicant), 802–658–2484. Transporting *computers*, between points in VT, NY, ME, NH, MA, CT, and RI.

MC 159532, filed December 3, 1981. Applicant: M & M MOTOR FREIGHT CORP., River Rd., P.O. Box 595, Utica, NY 13501. Representative: Herbert M. Canter, 305 Montgomery St., Syracuse, NY 13202, 315–472–8845. Transporting *general commodities* (except classes A and B explosives) between Syracuse and Utica, NY, on the one hand, and, on the other, points in Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego and St. Lawrence Counties, NY.

MC 159573, filed December 4, 1981. Applicant: WINCHESTER TRANSPORTATION, INC., 7780 W. Chicago Ave., Gary, IN. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, 317–846–6655. Transporting (1) *metal products*, between points in IL and IN, on the one hand, and, on the other, points in the U.S., and (2) *machinery*, between points in Lake County, IN, on the one hand, and, on the other, points in the U.S.

Volume No. OPI–325

Decided: December 15, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating in part.)

MC 15100 (Sub-3), filed December 7, 1981. Applicant: JOHN DeGRAND & SON, INC., 52 Hood Terrace, West Haven, CT 06516. Representative: William J. Meuser, 86 Cherry Street, P.O. Box 507, Milford, CT 06460, (203) 878–1747. Transporting *household goods*, between points in CT, on the one hand, and, on the other, points in MA, RI, CT, NY, NJ and PA.

MC 55891 (Sub-7), filed December 10, 1981. Applicant: JIM MARRS TRUCKING CO., INC., P.O. Box 632, Drumright, OK 74030. Representative: J. Michael Alexander, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237–2385, (214) 339–4108. Transporting *machinery*, between points in Blue Earth and Nicollet Counties, MN, on the one hand, and, on the other, points in KS, OK and TX.

MC 99761 (Sub-2), filed December 2, 1981. Applicant: MICHAEL N. BECHINA, d.b.a. CARMICHAEL CARTAGE COMPANY, 2200 South Loomis, Chicago, IL 60608. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603, (312) 263–2306. Transporting *general commodities* (except household goods, commodities in bulk, and classes A and B explosives), (a) between points in IL, and (b) between points in IL, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request, of its Certificate of Registration in MC–99761 Sub. 1.

MC 125951 (Sub-76), filed December 7, 1981. Applicant: SILVEY REFRIGERATED CARRIERS, INC., 3035 South 72nd Street, Suite 200, Omaha, NE 68124. Representative: Robert M. Cimino, (same address as applicant), (402) 393–5005. Transporting *such commodities* as are dealt in by wholesale and retail grocery and food business houses, between points in the U.S.

MC 133780 (Sub-7), filed December 7, 1981. Applicant: JOHN P. WEYER, INC., Route 1, Box 86B; Brownsville, WI 53006. Representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting *building and construction materials*, (1) between points in WI, on the one hand, and, on the other, points in AL, AR, CO, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, MS, MT, NE, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, WA and WY, and (2) between points in Cook County, IL, on the one hand, and, on the other, points in IN, IA, MI, MN, MO, NE, NC, OH, PA and WI.

MC 146800 (Sub-4), filed December 7, 1981. Applicant: VERMILLION BROTHERS, INC., Main Street Road, Keokuk, IA 52632. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501, (515) 682–8154. Transporting *food and related products*, between points in IL and IN, on the one hand, and, on the other, points in ID, OR, WA, AZ, CO, IA, NV, UT, CA and NM.

MC 148791 (Sub-17), filed December 10, 1981. Applicant: TRANSPORT-WEST, INC., 2125 North Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531–1777. Transporting *pulp, paper and related products*, between points in the U.S., under continuing contract(s) with Weyerhaeuser Company, of Tacoma, WA.

MC 152321 (Sub-1), filed December 9, 1981. Applicant: BOB WHITE, d.b.a. TRI LAKES EXPRESS, 728 North Washington, Springfield, MO 65803. Representative: Stephen G. Newman, P.O. Box 456, Jefferson City, MO 65102, (314) 635–7166. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in Barry, Christian, Greene, Stone, and Taney Counties, MO, on the one hand, and, on the other, points in Baxter, Benton, Marion, and Washington Counties, AR.

MC 152420 (Sub-2), filed December 7, 1981. Applicant: LAND TRANSPORT CORPORATION, 24 Sabrina Road, Wellesley, MA 02181. Representative: James E. Mahoney, 148 State Street, Boston, MA 02109, (617) 523–2660. Transporting *general commodities* (except classes A and B explosives), between points in ME, NH, VT, MA, RI, and CT.

Volume No. OPY–4–490

Decided: December 21, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 159676, filed December 11, 1981. Applicant: C. L. U., INC., 3400 Occidental Ave. S., Seattle, WA 98134. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055, (206) 228–3807. Transporting *general commodities* (except Classes A and B explosives), between points in King, Snohomish and Pierce Counties, WA, on the one hand, and, on the other, points in the WA and OR.

MC 159696, filed December 8, 1981. Applicant: HOLIDAY TOURS, LTD., 3413 Boulevard, Colonial Heights, VA 23834. Representative: Alma Louise Barker, 501 Fairmont Dr., Colonial Heights, VA 23834. To operate as a *broker*, at Colonial Heights, VA, in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, in charter and special operations in round-trip tours, beginning and ending at points in Colonial Heights, and Petersburg, VA, and extending to points in the U.S.

Volume No. OPY–4–492

Decided: December 21, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 34027 (Sub-22), filed December 11, 1981. Applicant: GREETINGS, INC., P.O. Box 82, Pella, IA 50219. Representative: Ronald R. Adams, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting

nonmetallic minerals and nonmetalic earths, between points in Marion County, IA, and Breckenridge County, KY, on the one hand, and, on the other, points in the U.S.

MC 138567 (Sub-4), filed December 15, 1981. Applicant: R. L. PAQUETTE, INC., Box 162, Middlebury, VT 05753. Representative: Roger L. Paquette, Jr., (same address as applicant), (802) 388–4839. Transporting *clay, concrete, glass or stone products*, between points in the U.S., under continuing contract(s) with White Pitment Corporation, of Florence, VT.

MC 148407 (Sub-2), filed December 15, 1981. Applicant: CHEMICAL DISTRIBUTORS, INC., 2262 N.W. Nicholai St., P.O. Box 10763, Portland, OR 97210. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055, (206) 235–1111. Transporting (1) *building materials*, (2) *used railroad ties*, and (3) *lumber and wood products*, between points in AZ, CA, ID, MT, VT, NV, OR, UT, and WA.

MC 156017, filed December 11, 1981. Applicant: GLEASON, INCORPORATED, 1248 S. Verde, Tacoma, WA 98405. Representative: Kathy A. Gleason (same address as applicant), (206) 759–6130. Transporting *lumber, pipe, tubing, building and construction material*, between points in the U.S., under continuing contract(s) with Halco Fence and Wire Co., of Hadlock, WA, and Commerce City, CO.

MC 157457 (Sub-3), filed December 11, 1981. Applicant: CONGOLEUM CARTAGE CORPORATION, 2323 S. 17th St., Elkhart, IN 46514. Representative: H. Barney Firestone, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603, (312) 263–1600. Transporting *such commodities* as are dealt in by discount, variety and department stores, between Kaufman, TX, and points in Bristol County, MA, Horry and Cherokee Counties, SC, Bergen County, NJ, and Los Angeles County, CA, on the one hand, and, on the other, points in the U.S.

MC 157457 (Sub-4), filed December 11, 1981. Applicant: CONGOLEUM CARTAGE CORPORATION, 2323 S. 17th St., Elkhart, IN 46514. Representative: Ronald N. Cobert, 1730 M St., N.W., Suite 501, Washington, DC 20036, (202) 296–2900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Rail Services, Inc., of Chicago, IL.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-37031 Filed 12-28-81; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

Awarding SES Bonuses

The Office of Personnel Management guidelines require that each agency publish a notice in the **Federal Register** for the agency's schedule for awarding Senior Executive Service Bonuses at least 14 days prior to the date on which the awards will be paid. The United States International Trade Commission intends to award a Senior Executive Service bonus for the performance rating cycle of October 1, 1980, through September 30, 1981 with payouts scheduled by January 15, 1982.

Issued: December 23, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-37021 Filed 12-28-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-112]

Certain Cube Puzzles; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 17, 1981, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Ideal Toy Corp., 200 Fifth Ave., New York, New York 10010. An amended complaint was filed on December 14, 1981. The complaint alleges unfair methods of competition and unfair acts in the importation of certain cube puzzles into the United States, or in their sale, by reason of the alleged (1) infringement of complainant's common law trademark, (2) false designation of origin by reason of copying complainant's trade dress, and (3) passing off of respondents' cube puzzles as those of complainant. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, during the pendency of the investigation, the Commission issue a temporary exclusion order, prohibiting importation of said articles into the United States except under bond, and, after a full investigation, the Commission issue both a permanent exclusion order and a permanent cease and desist order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.12 of the Commission's Rules of Practice and Procedure.

Scope of the investigation: Having considered the complaint, the U.S. International Trade Commission, on December 16, 1981, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(b)), an investigation be instituted to determine whether there is reason to believe there is a violation and whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain cube puzzles into the United States, or in their sale, by reason of the alleged (1) infringement of complainant's common law trademark, (2) false designation of origin by reason of copying complainant's trade dress, and (3) passing off of respondents' cube puzzles as those of complainant, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Ideal Toy Corp., 200 Fifth Ave., New York, N.Y. 10010

(b) The respondents are the following persons, alleged to be in violation of section 337, and are parties upon which the complaint is to be served:

Atco Electronics, Ltd., 1191 Broadway, New York, N.Y. 10001
BMJ Trading, Ltd., 12 East 33rd Street, New York, N.Y. 10016
Chinese Arts & Crafts, 537 S. Western Avenue, Los Angeles, Calif. 90020
Continental Variety, 1127 Broadway, New York, N.Y. 10010
Global Imports, 160 Fifth Avenue, New York, N.Y. 10010
John N. Hansen Co., 369 Adrian Blvd., Milbrae, Calif. 94030
Metro Charles Co., Inc., 1220 Broadway, New York, N.Y. 10001
Pan-Lon International, Inc., 1147 Broadway, New York, N.Y. 10001

P.G. Continental, Inc., 558 Pilgrim Drive, Suite A, Foster City, Calif. 99404
Plawner Toy Mfg. Corp., 250 Route 17, Lodi, New Jersey 07644
Rand International, 11 Lawson Lane, Great Neck, N.Y. 11023
Jack Stern, d/b/a Worldwide Discount, 22 Cornell Drive, Great Neck, N.Y. 11020
The Super Game Corp., 6330 N. California Avenue, Chicago, Ill. 60659
Vanguard Jewelry Corp., 1178 Broadway, New York, N.Y. 10001
Henry Wedermeyer Inc., 41 Madison Avenue, New York, N.Y. 10010
A & H Ltd., P.O. Box 67-774, Taipei, Taiwan
Abtron Industrial Corp, 5th Fl., No. 230, Sec. 4, Jen Ai Rd., Taipei, Taiwan
All Strong Enterprises Co., Ltd., P.O. Box 6-38, Peitou, Taipei, Taiwan
Alpha & Beta Toys Industrial Co., Ltd., P.O. Box 67-338, Taipei, Taiwan
Bayeast Industrial Co., Ltd., 9th Fl., No. 97, Nanking E. Rd., Sec. 2, Taipei, Taiwan
Cahinteef Corp. Ltd., Shui-Yuan Building, 4th Fl., No. 134, Shih Ta Rd., Taipei (107), Taiwan
Chi Mei Trading Co., Ltd., 10th F., No. 27 Chang-An E. Rd., P.O. Box 9-100, Taipei, Taiwan
Chin Yuee Industrial Co., Ltd., P.O. Box 68-1500, Taipei, Taiwan
Chiu Hop Enterprise Corp., 4th Fl., No. 9, Lane 38, Sung Chiang Rd., Taipei, Taiwan
Chi-Wei Enterprise Co., Ltd., 3rd Fl., No. 116, Nanking E. Rd., Sec. 5, Taipei, Taiwan
Chumunion C.L.W. International Corp., 10th F., 121 Jen Air Rd., Sec. 3, Taipei, Taiwan
The Coaster Co., Ltd., P.O. Box 68-446, Taipei, Taiwan
Dah Chiang Industrial Co., Ltd., P.O. Box 19, Ru Tsuo H. Hsiang, Taipei Hsien, Taiwan
Dargen Co., Ltd., 2nd Fl., 1-1, Lane 129, Chang An E. Rd., Sec. 2, Taipei, Taiwan
Doddiu Enterprise Co., Ltd., P.O. Box 8-323, Taipei, Taiwan
Evercheering Enterprise Co., Ltd., P.O. Box 3576, Taipei, Taiwan
Ever New Products International Corp., P.O. Box 17-48, Taipei, Taiwan
Excellent Metal Industrial Corp., P.O. Box 112, Hsin Chuang, Taipei, Taiwan
Gaiety Trading Co., Ltd., No. 38, Alley 29, Lane 291, Nanking, E. Rd. Sec. 5, Taipei 105, Taiwan
Gameking Industry Co., Ltd., P.O. Box 7-467, 11th Fl., No. 68, Sec. 8, Chungking S. Rd., Taipei, Taiwan
Gem Gem & Co., Ltd., P.O. Box 47-51, Taipei (103), Taiwan
Glocoso Products Co., Ltd., No. 76, Chuang Shan N. Rd., Sec. 1, 2nd Fl., P.O. Box 46-608, Taipei, Taiwan
Good Partner Corp. Ltd., P.O. Box 19-162, Taipei, Taiwan
or
2 Fl., No. 3, Lane 13, Shieh Chu Wei St., San Chung City, Taipei, Taiwan
Hanlong Products Corp., 2 Fl., No. 7-2, Lane 93, Chung San N. Road, Sec. 2, P.O. Box 59043, Taipei, Taiwan
Happy-Home Electro & Hardware Works S.A., P.O. Box 55-0624, 7 Lane, 539 Cheng Teh Rd., Taipei, Taiwan
Honbin International Co., Ltd., Fl. 1, 350 Fu Hsing N. Rd., Taipei, Taiwan
Jacktune Co., Ltd., P.O. Box 84-312, Taipei, Taiwan
Jen Shin National Co., Ltd., P.O. Box 1998, Taipei, Taiwan
Junn-Ho Enterprise Co., Ltd., 3rd Fl., No. 90, Lern-Ai Rd., Sec. 3, Taipei, Taiwan
JWU Lih Shing Yeh Co., Ltd., 2nd Fl., No. 143 Chun, Shan Rd., Sec. 3, Chung Ho City, Taipei, Taiwan
KTC (Taiwan), Inc., P.O. Box 67-695, Taipei, Taiwan
Kan Shin Trading Co., Ltd., P.O. Box 10153, No. 18, Lane 14, Di-Hwa St., Sec. 1, Taipei, Taiwan
Key Men Co., Ltd., P.O. Box 91-321, Taipei, Taiwan
King Swey Enterprises Co., Ltd., P.O. Box 68-2328, Taipei, Taiwan
Lee Tai Industrial Co., Ltd., P.O. Box 46-578, Taipei, Taiwan
Lee Tata International Corp., P.O. Box 53-196, Taipei, Taiwan
Liang Hwa Toys Co., Ltd., P.O. Box 40-64, 2d Fl., 199, Tzu Chiang Rd., Sec. 1, San-Chung City, Taipei, Taiwan
Linca Co., Ltd., 6, Alley 24, Lane 208, Zui An St., P.O. Box 7-185, Taipei, Taiwan 106
Long Ten-Ten Industrial Co., Ltd., 3 Fl., No. 380-8, Chung Hou St., P.O. Box 138, Pei-Tou, Taipei, Taiwan
Lonvy Enterprise Co., P.O. Box 16-510, Taipei, Taiwan
Maruwa Gain Corp., No. 15-1, Alley 2, Lane 250, Nanking E. Rd., Sec. 5, P.O. Box 48-371, Taipei, Taiwan
Ming Juo Industries Co., Ltd., Rm 6, 7 Fl., No. 69, Lane 390 Tuo Hua S. Rd., P.O. Box 53-1056, Taipei, Taiwan
Motee Enterprises (Taiwan), Inc., 3 Fl., No. 39, Sec. 2, Hsin-Sheng N. Road, P.O. Box 39-599, Taipei, Taiwan
Multi-Bri Inc., P.O. Box 24-818, No. 68, Dah Daw Road, Taipei, Taiwan 106
Nissho Trading Co., Ltd., 8-16-3-chome, Higashi-Mukojima, Sumida-Ku, Tokyo, Japan
Olivewood Enterprise Co., Ltd., No. 30, Lane 60, Kuang Fu N. Rd., P.O. Box 36-114, Taipei, Taiwan
Orient International Corp., P.O. Box 59394 Taipei, 28-1, Lane 96, Chung Shan N. Rd., Sec. 2, Taipei, Taiwan
Otto International Corp., 5th Fl., No. 103 Roosevelt Rd., Sec. 2, Taipei, Taiwan
Outpost Enterprise Co., Ltd., P.O. Box 24-598, Taipei, Taiwan
Oxo Toy Corp., P.O. Box 68-84, Taipei, Taiwan
Pan International Ltd. (Taiwan), Rm. 1020, 10th Fl., No. 90, Chun Hwa Rd., Sec. 1, Taipei, Taiwan
Penn Brother Industrial Co., Ltd., P.O. Box 36-440, Taipei, Taiwan
Robert S. Hong & Co., Ltd., P.O. Box 8-59, Taipei, Taiwan
Rongine International Corp., 6th Fl., 259-262: Chung Hsiao East Rd., Sec. 5, Taipei 105, Taiwan
Royce Enterprise Co., Ltd., P.O. Box 18-113, Taipei, Taiwan
S.I. C., Ltd., P.O. Box 91-77, Taipei, Taiwan
San Wu Hong Co., Ltd., P.O. Box 68-419, 239, Tihwa St., Sec. 1, Taipei, Taiwan
San Yu Inc., 55 Min Teh Rd., Wu Ku Hsiang, Taipei Hsein, Taiwan
Sharer Enterprises Co., Ltd., P.O. Box 55-32, Taipei, Taiwan
Sun Ching Industrial Corp., P.O. Box 8-344, Taipei, Taiwan
Sundry Products, Inc., P.O. Box 58947, No. 16, Alley 9, Lane 31, Sec. 5, Nanking East Road, Taipei, Taiwan
Sung Shang Enterprise Co., Ltd., No. 84, Lane 920, Chung, Shan Rd., Sec. 2, Chung Hwa, Taiwan
Sunseed Corp., 5th Fl., 271, Chung Hsiao E. Rd., Sec. 3, Taipei, Taiwan
Taifa Polymer Corp., Al-li Yuan Building, 5th Fl., 78 An-Ho Road, P.O. Box 26-370, Taipei, Taiwan
Taiwan Sports & Trading Ltd., P.O. Box 59024, Taipei, Taiwan (100)
Taiwell (Toys) Enterprise Inc., P.O. Box 17-331, Taipei, Taiwan
Tapou Industries Co., Ltd., 5/F No. 50 Nanking E. Rd., Sec. 5, P.O. Box 48-104, Taipei, Taiwan
Tay Horng Enterprise Co., Ltd., No. 42, Lane 156, Hsi Wei St., Sanchung City, Taiwan
Teh Yor Industrial Co., Ltd., 129, 2nd Fl., Chung Shan N. Rd., Sec. 1, Taipei, Taiwan 104
Thumb Enterprise Co., Ltd., P.O. Box 84-421, Taipei, Taiwan
Tip Top & Co., Ltd., P.O. Box 45-86, Taipei, Taiwan
Top Sales Corp., P.O. Box 3029, Mucha, Taipei, Taiwan
Torng Huei Enterprise Co., Ltd., P.O. Box 19-220, Taipei, Taiwan
Torng Yih Enterprise Co., Ltd., P.O. Box 48-59, Taipei 105, Taiwan
Trades-Man Industrial Co., Ltd., P.O. Box 39-276, Taipei, Taiwan
Vuzu Development Cor., 213 Rau-her Street, P.O. Box 18-61, Taipei 105, Taiwan
Whole Yean Industry Corp., P.O. Box 67-268, Taipei, Taiwan
Wiland International Corp., P.O. Box 14-138, Taipei, Taiwan
William Woo Int'l (Taiwan) Ltd., P.O. Box 53-202, Taipei, Taiwan
Ying Hui Co., Ltd., P.O. Box 1345, Taipei, Taiwan
Jack Young Ltd., P.O. Box 107, Peitou, Taipei, Taiwan

(c) Ralph Elsas-Patrick, Unfair Import Investigations Division, U.S. International Trade Commission, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street, NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Ralph Elsas-Patrick, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0440.

By order of the Commission.

Issued: December 23, 1981.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-37022 Filed 12-28-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104-TAA-4]

Galvanized Fabricated Structural Steel Units for the Erection of Electrical Transmission Towers From Italy

Determination

Based on the record [1] developed in investigation No. 104–TAA–4, the Commission determines,[2] pursuant to section 104(b) of the Trade Agreements Act of 1979, that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of an industry in the United States be materially retarded, by reason of imports of galvanized fabricated structural steel units for the erection of electrical transmission towers from Italy if the countervailing duty order on such merchandise were to be revoked.

Background

On March 27, 1980, the U.S. International Trade Commission received a request from counsel for Societa Anonima Elettrificazione S.p.A. (SAE), an exporter accounting for a significant proportion of exports to the United States of the merchandise covered by the countervailing duty order, for an investigation under section 104(b) of the Trade Agreements Act of 1979. A second request for the investigation was received from the Delegation of the Commission of the European Communities on March 28, 1980.

On April 28, 1981, the Department of Commerce published a notice in the **Federal Register** of its preliminary determination of the net amount of the subsidy applicable to the merchandise covered by the countervailing duty order. On the basis of that determination by Commerce, the U.S. International Trade Commission, pursuant to section 104(b)(2) of the Trade Agreements Act, on July 10, 1981, instituted investigation No. 104–TAA–4 on galvanized fabricated structural steel units for the erection of electrical transmission towers from Italy, to determine whether an industry in the United States would be materially injured or threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked.

Notice of the institution of the Commission's investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of July 15, 1981 (46 FR 36780). The hearing, which had initially been scheduled for October 7, 1981, was subsequently rescheduled and held on October 23, 1981, in Washington, D.C. All persons requesting the opportunity were permitted to appear in person or by counsel. The Commission vote on this investigation was held in public session on December 10, 1981.

Views of Chairman Alberger, Vice Chairman Calhoun, Commissioner Stern and Commissioner Eckes

Imports of galvanized fabricated structural steel units for transmission towers have been subject to a countervailing duty order since April 1967. Based on the record of this investigation we conclude that revocation of this order would not result in material injury or threat of material injury to the U.S. industry.[3] In arriving at this decision, we considered, among other factors, the relatively insignificant effect of the outstanding order on the overall competitiveness of Italian imports, the improving performance of the domestic industry, and the long-term decline in the absolute and relative quantity of the subject imports.

The Domestic Industry

The domestic industry is defined as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." [4] The term "like product" means "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation." [5]

The imported Italian products are galvanized fabricated structural steel units for the erection of electrical transmission towers. These towers are used to support wires and cables for transmitting high voltage electric power between generating stations and substations. Imports from Italy have consisted entirely of components for lattice transmission towers.[6] No known importations of components for galvanized tubular transmission towers have been made.[7]

There are about twelve domestic producers of galvanized fabricated structural steel units for lattice transmission towers. For all practical purposes the domestically-produced lattice transmission towers are identical to the imported products. Therefore, we find them to be the "like product." For the purpose of this investigation, the producers of these units constitute the U.S. industry.

Several of these producers also manufacture components for galvanized steel tubular transmission towers. Except for shipments, the only available economic data includes galvanized tubular steel transmission towers which account for less than 5 percent of domestic production. In situations such as this, section 771(4)(D) of the Tariff Act permits the Commission to assess the impact of the imports under

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[1] The "record" is defined in § 207.2(j) of the Commission's *Rules of Practice and Procedure* (19 CFR 207.2(j)).

[2] Commissioner Frank determined that an industry in the United States would be threatened with material injury if the countervailing duty order were to be revoked.

[3] We did not consider the issue of material retardation of the establishment of an industry in the United States if the duty were revoked because there are already firmly established producers of the like product as defined in this investigation.

[4] Section 771(4)(A) of the Tariff Act of 1930, 19 U.S.C. 1677(4)(A).

[5] Section 771(10) of the Tariff Act of 1930, 19 U.S.C. 1677(10).

[6] To a limited extent, tubular steel poles can also be used to transmit high voltage electric power.

[7] Commission Report at A–4.

investigation by examining the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided. Therefore, with the exceptions of shipments data, our determination in this investigation is based upon an examination of the potential impact of these imports on the production of all galvanized fabricated structural steel units for transmission towers.[8]

Present Condition of the Domestic Industry

The domestic industry's performance generally improved over the period covered by this investigation (January 1978–June 1981). The industry reported net losses in 1978 and 1979, but reported aggregate operating profits in 1980, which rose to 10.5 percent of sales in the first six months of 1981.

Some restructuring of the industry occurred—several of the major producers closed plants in one location to open facilities or expand operations in other areas. As a result of these changes, industry capacity will increase an estimated 17 percent (to 262,000 tons) by the end of 1981 as compared to 1980. Several fabricators have expansion plans, and there are some new entrants to the industry (reportedly organized to take advantage of the small business set-aside for government contracts).

Capacity utilization rose significantly in this period. In the first six months of 1981, it declined slightly, but in 1980, capacity utilization was substantially higher than in 1979. Productivity remained relatively stable in 1978–80, and then increased approximately 5 percent in January–June 1981.

Although U.S. consumption of galvanized fabricated steel units for transmission towers during the investigation period was low compared to the late 1960's, the recent trend is up. Total consumption for 1980 was 10 percent over 1979, and the first six-month figures for 1981 showed an additional increase over the comparable 1980 period. U.S. producers' domestic shipments increased from 109,044 tons in 1978 to 128,799 tons in 1980, or be about 18 percent.[9] However, shipments in January–June 1981 were about 12 percent less than shipments during the corresponding period in 1980.[10] This decline reflected an increase in imports, primarily from countries other than Italy. U.S. export shipments rose sharply in the investigation period, although they still account for a relatively small percentage of total producer shipments.

Likely Effects of Removal of the Countervailing Duty Order

Our review of the record leads us to conclude that removal of the order will not provide a material competitive advantage to the Italian importers and will not appreciably alter their behavior so as to cause material injury to the domestic producers. Even if revocation results in a reduction in import prices fully equivalent to the amount of the duty, we do not expect the volume of U.S. imports from Italy to increase appreciably. This is because (1) any price decrease resulting from revocation of the order would be relatively insignificant, (2) the importance of imports from Italy in the U.S. transmission tower market has changed dramatically since 1967 when the order first came into effect, and (3) the bid evaluation process in this industry focuses on a number of factors in addition to price.

First, removal of the countervailing duty order will not cause a significant change in the price of galvanized steel units for transmission towers imported from Italy. From its imposition in 1967 until 1980, the absolute amount of the countervailing duty remained constant.[11] However, the effect of the countervailing duty has declined significantly as the value of steel units for transmission towers increased. In 1967, the countervailing duty was equivalent to an effective rate of about 6.5 percent ad valorem. In 1980, it was about 2 percent, and in 1981, it was less than 1.5 percent. The current small amount of the countervailing duty relative to total landed value essentially limits the price reductions on U.S. imports from Italy that could result from revocation.

Second, since 1967, imports from Italy have declined both in relative and in absolute terms. In 1967, imports amounted to roughly 75,000 tons or 25 percent of the U.S. market. In contrast, in 1979 and 1980, imports amounted to less than 10,000 tons and 5,000 tons, respectively, representing less than 5 percent and less than 2 percent of the U.S. market.[12] In the period covered by this investigation, with the exception of the first half of 1981, Italian imports trended downward as a percentage of U.S. consumption.

This trend is reflected in SAE's bid award pattern, which shows a sharply declining ratio of bids awarded, from more than 25 percent of the tonnage bid by SAE in 1979 to less than 5 percent in January–June 1981. SAE's ratio of tonnage awarded to total tonnage bid will, however, show an increase in the latter half of 1981 on the basis of the awarding of a large contract in July 1981. This single contract is not necessarily indicative of a reversal of the downward trend.

In the 1960s, when the countervailing duty was significantly larger on an ad valorem basis, the order led to the initial reversal of SAE's performance in the U.S. market.[13] This reversal was intensified by other market developments. These included a severe decline in consumption of transmission towers as a result of high interest rates and environmental concerns; a dramatic increase of U.S. imports of towers from Japan and Canada; increased competitiveness of the U.S. industry resulting from the growth of minimills, relocation of capacity, improved productivity, and lower costs; and an increase in the use of substitute products. At the present time, with the effective rate of the countervailing duty greatly reduced, the level of U.S. imports from Italy is no longer significantly linked to the existence of the countervailing duty order.

The third point supporting our view that imports will not increase appreciably if the order is revoked relates to the role of price in competition for transmission towers sales. Contract awards are made in this industry on the basis of bid evaluation. In this process, many factors are considered. Among the most important, in addition to price, are maintenance costs, erection costs, punctuality of the vendor, tower appearance, and, in one recent case, payment terms. The contract usually goes to the lowest bidder as determined by the overall bid evaluation process, not solely on the basis of price. The record of this investigation includes reports of several instances in which the lowest bidder on a price basis did not win a particular sale.

Conclusion

We foresee little, if any, increase in imports of galvanized structural steel units for transmission towers from Italy as a result of revocation. The insignificant price and volume changes that may occur will not adversely effect

[8] See Additional Views of Vice Chairman Calhoun.

[9] For purposes of this investigation, production and shipments are considered synonymous since parts and components for transmission towers are not normally inventoried. Commission Report at A-16.

[10] Id. at A-14.

[11] In 1980 the Department of Commerce revised its determination as to the value of the net subsidy bestowed by the Italian government from 13.67 lire per kilogram to 18 lire per kilogram.

[12] Commission Report at A-23 and A-24.

[13] SAE's Posthearing Brief at 8.

the currently favorable performance of the domestic industry. We, therefore, conclude that the domestic industry would not be materially injured or threatened with material injury by termination of the countervailing duty order.

Additional Views of Vice Chairman Calhoun

This is a minor point, but one I think is worthy of note. The majority's language in our industry analysis that 771(4)(D) permits us to assess the impact of the imports on the narrowest group or range of products which includes the like product is, by an important omission, misleading. To be precise, this section requires us to make our injury assessment against production of the like product. We can do the alternative assessment described only when available information does not permit assessment against production of the like product. In this case, for the reasons given, information does not allow for such an assessment.

Views of Commissioner Frank

Introduction

Based on the record developed in Investigation No. 104–TAA–4, I determine, pursuant to section 104(b) of the Trade Agreements Act of 1979, that an industry in the United States would be threatened with material injury by reason of imports of the merchandise (Steel Units for Electrical Transmission Towers from Italy), covered by the countervailing duty order if the order were to be revoked.

My determination is based upon the considerations set forth below.

Discussion

Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defined the term "industry" as the "domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[14] "Like product" is defined as a product which is like, or in the absence of like, most similar in characteristics and uses with, the article under investigation.[15]

The imported products which are the subject of this investigation are galvanized fabricated structural steel units for the erection of electrical transmission towers from Italy.[16] These towers are utilized by electric utilities whether publicly or privately owned.

Condition of the U.S. industry

The staff report to the Commission of November 27, 1981, covering Investigation No. 104–TAA–4, indicates historical demand and trade trends in the subject products with particular focus on the January 1978 through June 1981 period. References to the pre-1967 surge in Italian exports of the steel units for electrical transmission towers were made in the above-mentioned Commission Staff Report, testimony by or submissions from the North American representative of Societa Anonima Elettrificazione S.p.A. (SAE) of Italy, or by Mr. Alfred R. McCauley, Esq. on behalf of Saelectric Transmission, Inc., and by United States Steel Corportation, *et al.*

These sources provided current opinion on the U.S. industry and impacts which would occur as a result of revocation of the countervailing duty order (CVD) for the subject products. Essentially, galvanized steel transmission towers are built to order specifications so that inventory considerations are minimal. The four largest (U.S.) firms involved in this industry accounted for 80% of the aggregate domestic output of galvanized fabricated steel for transmission towers reported in January 1978–June 1981.[17]

SAE has a major position in the Italian export of galvanized steel transmission towers world-wide, and in many developing countries, SAE has provided services similar to those of a general contractor while at the same time providing transmission towers. However, in the U.S. market, numerous general contractors or utility company employees perform functions SAE might provide in construction and related areas. Hence, the U.S. market is based predominantly on price and related factors. The impact of high interest rates did tend to curb U.S. utility companies' commitments to new projects in 1981.

Because of the long bid and order to delivery cycle in the industry, up to two and one-half years, the recent and present economic and profit situations are not fully reflective of future operational achievements. Examination of recent bidding tactics and orders won is important. The use of external payment terms without interest charges for a significant time period by SAE in their sale to San Diego Power & Light is one illustration of intensified price discounting and price-related competition. The Japanese and Canadian manufacturers of steel units for transmission towers essentially have gained a very significant share of the U.S. market during the last decade. Now, because of worldwide slack demand, companies such as SAE (which experienced some loss of opportunities and business in countries involved in warfare, internal strife, and balance of payments problems) may seek to gain a larger share of U.S. business that has not been lost to the Japanese, *et al.* Potentials for export business for U.S. manufacturers of galvanized steel units for transmission towers is still minimal and depressed, although growing recently for U.S. producers.

Many U.S. steel producers are hurt by the overall U.S. investment and economic decline, especially in construction areas. Some of these producers will be threatened with material injury by the termination of the countervailing duty order on galvanized structural steel units for electrical transmission towers from Italy. SAE has already displayed a capability to obtain large orders by aggressive special price-related concessions in the case of the 7,000 ton San Diego Power & Light order. There is a serious threat of material injury to U.S. manufacturers of steel units for electrical transmission towers if other large orders are lost to Italian suppliers of such units because of price-related concessions.

One extremely serious aspect of the entire situation is that the full extent of Italian subsidies and related benefits has not been determined. The U.S. Department of Commerce, because of apparent inadequate or inaccurate response by the Italian Government and SAE to the U.S. Department of Commerce questionnaire utilized in its Section 751 net subsidy review, did not obtain information I consider to be crucial to the Commission's Section 104 investigation. While I recognize the bifurcation of duties on the part of Commerce and the Commission as mandated by regulations and rules and procedures emanating from the Trade Agreements Act of 1979, I contend it is appropriate for the Commission to grant a postponement of decision in this investigation until after the second annual review by the U.S. Department of Commerce. Deputy Assistant Secretary for Import Administration, Gary Horlick, indicated that the final results of the Commerce Department's scheduled next

[14] Section 771(4)(A) of the Tariff Act of 1930.

[15] Section 771(10).

[16] Galvanized fabricated structural steel units for the erection of electrical transmission towers are currently provided for under Tariff schedules of the United States (TSUS) items 653.00, if imported complete or substantially complete; 652.94, if made up into a series of sections; or other items including but not necessarily limited to 609.84, 646.54, 646.65, 646.70, 646.72, 657.25 and 923.51, if imported as individual pieces.

[17] Investigation No. 104–TAA–4, Staff Report to the Commission, November 27, 1981, at page 12, footnote 1.

review of this countervailing duty order would be *published* by May 1982, or about 6 months from now. However, a Commission determination of no injury in Investigation No. 104–TAA–4 will terminate Commerce's investigation. In the event of such termination, the U.S. Government may deprive itself, as well as others, of knowing the full answers to the Commerce Department's questionnaire or the extent to which subsidies exist relative to U.S. imports of steel units for electrical transmission towers from Italy.

The practice of seeking to bring investigations to fast resolution when material evidence is not officially available can be damaging to the U.S. economy. This is especially true when statutory requirements do not mandate such fast action. These actions can lead to many other efforts by foreign countries or companies to seek revocation of countervailing duty orders under similar circumstances where sufficiency of questionnaire responses is questioned. The precedence that the Commission has established can lead to some decisions which are based upon inadequate information. Such insufficiency could result from unintentional or intentional response efforts by foreign governments or corporations. Since, in the case of Investigation No. 104–TAA–4, the Commission could withhold decision even until 1983, I believe it is only appropriate to determine more exactly the level of subsidies that are applicable. It is alleged by the U.S. Steel Corporation that the previously undisclosed subsidies exceed significantly the ten-percent level. This alleged subsidization is not reflected in the present countervailing duty order.

Such a level could partly explain the unusual ability of SAE to provide a grace period without interest charges when interest levels have recently exceeded 15 percent. Such subsidy advantages can enable an aggressive marketing company to obtain significant orders in U.S. markets and threaten to materially injure the U.S. Manufacturers of galvanized steel units for the erection of electrical transmission towers. Thus, I conclude that based on the record developed in Investigation No. 104–TAA–4, I determine, pursuant to section 104(b) of the Trade Agreements Act of 1979, that an industry in the United States would be threatened with material injury by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked.

By order of the Commission.

Issued: December 16, 1981.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-37024 Filed 12-28-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-95]

Certain Surface Grinding Machines and Literature for Promotion Thereof; Termination of Respondents

AGENCY: International Trade Commission.

ACTION: Termination of investigation as to respondents Lian Feng Machine Co., Ramco Machinery Sales, Inc., Langford Machinery, Ralmike's Tool-A-Rama, Sigma Machinery, Inc., and Performance Machine Tools.

SUMMARY: The Commission has terminated the above-captioned investigation as to respondents Lian Feng Machine Co., and Ramco Machinery Sales, Inc. based on consent order agreements and as to respondents Langford Machinery, Ralmike's Tool-A-Rama, Sigma Machinery, Inc., and Performance Machine Tools based on settlement agreements.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain surface grinding machines and literature for the promotion thereof. The complainant, Brown and Sharpe Mfg. Co., and respondents Lian Feng and Ramco jointly moved to terminate the investigation as to aforementioned respondents on the basis of consent order agreements. Complainant, Brown & Sharpe Mfg. Co., and respondents Langford, Ralmike's Tool-A-Rama, Sigma, and Performance jointly moved to terminate the investigation as to the aforementioned respondents on the basis of written settlement agreements.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E St., NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Clarease E. Mitchell, Esq., Office of the General Counsel, telephone 202–523–0148.

By order of the Commission.

Issued: December 23, 1981.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-37023 Filed 12-28-81; 8:45 am]

BILLING CODE 7020-02-M

[332-134]

Conditions Relating to the Importation of Canadian Softwood Lumber into the United States

AGENCY: International Trade Commission.

ACTION: At the request of the Committee on Finance of the U.S. Senate and following receipt of a request from the Chairman of Subcommittee on Trade of the Committee on Ways and Means of the U.S. House of Respresentatives on December 4, 1981, and December 8, 1981, respectively, the U.S. International Trade Commission instituted investigation No. 332-134 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of gathering and presenting information on softwood lumber imports from Canada and the factors affecting the competitiveness of U.S. producers of softwood lumber. This study will present a profile of the United States and Canadian markets and industries, with an emphasis on the costs of producing softwood lumber in the U.S. Pacific Northwest and in British Columbia.

EFFECTIVE DATE: December 16, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. William Hoffmeier or Mr. Jeff Wood, Agriculture, Animals and Forest Products Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–724–1766 or 202–724–0095, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Committee on Finance requested that the Commission report include, in particular, information with respect to:

1. The U.S. market (United States and Canadian factors of competition including a discussion of imports, production including multinational operations, and consumption).
2. A comparison of stumpage prices and appraisal methods.
3. A comparison of fixed and variable costs of production.
4. A comparison of transportation costs.
5. A comparison of marketing practices (including a discussion of the impact of Canadian softwood lumber on the various regions of the U.S. market).
6. A comparison of Government policies and regulations and their

influence on the softwood lumber industry.

The Committee asked that the Commission transmit its report not later than 4 months after receipt of the request.

The Chairman of the Subcommittee on Trade of the Committee on Ways and Means requested that the report include, in addition to a review of the composition of the industry in both countries, "a comparative analysis of the stumpage appraisal systems, industry wage rates, nature of forest resources, forest policy, employment policy as it relates to this industry, methods of taxation, and profit and risk allowances."

Public Hearing: A public hearing in connection with the investigation will be held in Room 223, Federal Center Building, 1220 SW 3rd Street, Portland, Oregon, on February 17, and 18, 1982. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the pubblic hearing should be filed with the Secretary, United States International Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, February 12, 1982.

Written Submissions: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than February 20, 1982. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: December 18, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-37079 Filed 12-28-81; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 81-23]

Ben Phillip Estes; Revocation of Registration

On August 28, 1981, the Acting Adminstrator of the Drug Enforcement Administration (DEA) directed an Order To Show Cause to Ben Phillip Estes, M.D. (Respondent), of 1309 South Adams Street, Fort Worth, Texas. The Order To Show Cause proposed to revoke the Respondent's DEA Certificate of Registration, AE6099027, and was predicated upon the Respondent's conviction in the United States District Court for the Northern District of Texas following his plea of nolo contendere to two counts of unlawfully causing the distribution of controlled substances in violation of 21 U.S.C. 841(a)(1) and 21 CFR 1306.04(a).

By letter dated September 28, 1981, the Respondent requested a hearing on the issues raised by the Order To Show Cause. The matter was placed in the docket of Administrative Law Judge Francis L. Young. On October 1, 1981, Judge Young ordered that the Respondent and the Government file and exchange written prehearing statements of issues perceived and evidence to be presented. The Government complied with the Administrative Law Judge's order. However, the Respondent failed to file a prehearing statement and, in fact, no correspondence has been received from him since receipt of his original letter requesting a hearing.

On November 17, 1981, Judge Young entered a Memorandum and Order Terminating Proceedings. Judge Young noted that Respondent had twice failed to comply with directions to specify the issues which he perceives as requiring a hearing. Judge Young further noted that by failing to file a Prehearing Statement, Respondent has said, in effect, that he intends to call no witnesses and to offer no documentary evidence at a hearing. Citing *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432 (1980), Judge Young concluded that the law does not require Government agencies to perform useless and meaningless acts such as scheduling and convening a hearing in this case. Accordingly, Judge Young terminated the proceedings before him. The Acting Administrator likewise finds that Respondent waived his right to a hearing, and enters this Final Order on the record as it appears, as he is permitted to do by 21 CFR 1301.54 (d) and (e).

The Acting Administrator has examined the record in this matter and finds that on October 23, 1981, during the pendency of these proceedings, the Texas State Board of Medical Examiners cancelled and revoked Respondent's medical license. Under Texas law, the cancellation and revocation of a practitioner's medical license terminates his authorization to possess, dispense, prescribe or otherwise handle controlled substances. This Administration has consistently held that termination of state authorization to handle controlled substances will result in revocation of a practitioner's DEA registration or denial of a practitioner's application for DEA registration. See *In the Matter of Jess B. Caderao, M.D.*, Docket No. 81-15, 45 FR 50866 (1981); *In the Matter of Marshall S. Tuck, M.D.*, Docket No. 80-28, 45 FR 85845 (1980); *In the Matter of Jack A. Braley, D.O.*, Docket No. 80-14, 45 FR 74596 (1980); *In the Matter of John Forrest Cornely, M.D.*, 46 FR 38166 (1981); *In the Matter of David Sachs, M.D.*, Docket No. 77-2, 42 FR 29112 (1977).

Since the Respondent might choose to appeal the action of the Texas Board of Medical Examiners and move to stay the cancellation of his license, the Acting Administrator has decided to premise his action on the fact of Respondent's conviction as well as the fact of the cancellation and termination of his Texas medical license.

The Acting Administrator has examined the facts giving rise to the plea of nolo contendere Respondent entered in the United States District Court for the Northern District of Texas on May 22, 1981. Undercover officers and agents from the Fort Worth Police Department and the Texas State Board of Medical Examiners purchased prescriptions for controlled substances from Respondent fifteen (15) times in 1979 and 1980. The controlled substances which Respondent prescribed was Didrex, a Schedule III stimulant. The Acting Administrator finds that one Fort Worth Police Department officer purchased Didrex prescriptions from Respondent on six occasions. At no time did the officer manifest any symptoms requiring the prescribing of Didrex. The Acting Administrator further finds that Respondent sold Didrex prescriptions on seven occasions to one agent of the Texas State Board of Medical Examiners and similar prescriptions on three occasions to another Texas Medical Board agent. Respondent telephoned prescriptions to a Fort Worth pharmacy after a perfunctory medical

examination consisting only of taking the agent's blood pressure and pulse. These agents did not manifest any symptoms, nor were they suffering from any condition requiring Didrex. The Acting Administrator finds that each such prescription written by Respondent was an unlawful distribution of a controlled substance.

This Administration has consistently held that a DEA registration may be revoked based upon a controlled substance related felony if the Respondent merely asks for a hearing and does no more. *In the matter of Marshall D. Nickerson, Jr., M.D.*, Docket No. 80-19, 45 FR 72310 (1980); *In the Matter of Thomas E. Johnston, M.D.*, Docket No. 80-17, 45 FR 72311 (1980).

Having examined the record in this case, and having concluded there is sufficient statutory ground for the revocation of DEA Certificate of Registration AE6099027 under 21 U.S.C. 824, it is the decision of the Acting Administrator to revoke the Respondent's DEA Certificate of Registration. Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Acting Administrator hereby revokes DEA Certificate of Registration AE6099027, issued to Ben Phillip Estes, M.D., for the reason that on October 23, 1981, the Texas State Board of Medical Examiners cancelled and revoked his medical license, terminating his authority to handle controlled substances in Texas; and for further reason that on May 22, 1981, Respondent was convicted in the United States District Court for the Northern District of Texas on two (2) counts of unlawfully causing the distribution of Schedule III nonnarcotic controlled substances, in violation of 21 U.S.C. 841(a)(1), a felony relating to controlled substances. This revocation is effective immediately.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

December 18, 1981.

[FR Doc. 81-36953 Filed 12-28-81; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 81-12]

Joseph Henry Pritchett, Tuscaloosa, Alabama; Hearing

Notice is hereby given that on March 20, 1981, the Drug Enforcement Administration, Department of Justice, issued to Joseph Henry Pritchett, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny the application executed by him on August 4, 1980 for authority to possess, dispense and distribute controlled substances pursuant to Section 303 of the Controlled Substances Act (21 U.S.C. 823).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, January 12, 1982, in Room 116, Cumberland School of Law, Samford University, 800 Lakeshore Drive, Homewood, Alabama.

Dated: December 22, 1981.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc 81-36969 Filed 12-28-81; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 14-18, 1981.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-11, 779; Genesco, Inc., Nashville, TN

TA-W-11, 780; J & M Plant, Nashville, TN

TA-W-11, 781; Genesco, Inc., Danville, KY

TA-W-11, 782; Genesco, Inc., Fulton, MS

TA-W-11, 783; Genesco, Inc., Iuka, MS

TA-W-11, 784; Genesco, Inc., Ripley, MS

TA-W-11, 785; Genesco, Inc., McMinnville, TN

TA-W-11, 786; Genesco, Inc., Lewisburg, TN

TA-W-11, 787; Genesco, Inc., Pulaski, TN

TA-W-11, 788; Genesco, Inc., Waynesboro, TN

TA-W-11, 789; Genesco, Inc., Hohenwald, TN

TA-W-11, 790; Genesco, Inc., Centerville, TN

TA-W-11, 791; Genesco, Inc., Camden, TN

TA-W-11, 792; Chapel Hill Terminal, Chapel Hill, TN

TA-W-11, 793; Fayetteville Terminal, Fayetteville, TN

TA-W-11, 794; Genstar Terminal, Nashville, TN

TA-W-11, 795; Huntsville Terminal, Huntsville, AL

TA-W-11, 796; J & M Terminal, Nashville, TN

TA-W-11, 797; Customer Service Terminal, Nashville, TN

TA-W-11, 798; Fayetteville Terminal MMD, Fayetteville, TN

TA-W-11, 799; 63rd Ave. Warehouse, Nashville, TN

TA-W-11, 800; Main St. General Maintenance & Capitol Products, Nashville, TN

TA-W-11, 801; Dominion Shoe Co., Charlotte, NC

TA-W-11, 802; Chapel Hill Sole Cutting, Chapel Hill, TN

TA-W-11, 803; General Adhesives & Chemical, Nashville, TN

TA-W-11, 804; Southern Sole, Nashville, TN

TA-W-11, 805; Tullahoma Capitol Products, Tullahoma, TN

TA-W-11, 614; Laporte Plastics Corp., Laporte, IN

TA-W-12, 165; Utica Duxbak Corp., Utica, NY

TA-W-12, 239; Disposable Profiles, Inc., Utica, NY

TA-W-12, 008; Ray-O-Vac Corp., Lancaster, OH

TA-W-11, 152; Standard Steel, Div. of Titanium Metals Corp., Burham, PA

TA-W-12, 036; Vogue Dolls, Inc., Laconia, NH

TA-W-12, 349; Intersystem Design & Technology Corp., Goose Creek, SC
TA-W-12, 350; Intersystem Design & Technology Corp., Summerville, SC
TA-W-12, 515; Dayton Industries, Inc., Passaic, NJ
TA-W-11, 411; Joseph Dyson & Sons, Inc., Painesville, OH
TA-W-11, 747; Nakagawa Corp. de Puerto Rico, San Lorenzo, Puerto Rico
TA-W-11, 850; The Telescope Folding Furniture Co., Inc., Granville, NY

In each of 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-10, 731; Roane Limited, Rockwood, TN
TA-W-12, 818; New City Steel Co., Chicago, IL
TA-W-12, 807; Volkswagen of America, Inc., Westmoreland Assembly Plant, New Stanton, PA
TA-W-12, 808; South Charleston Stamping Plant, South Charleston, WV

In each of the following cases the investigation revealed that criterion (3) has not been met for the specified reason(s).

TA-W-13, 003; Schwartz Industries, Inc., Warren, MI

Aggregate U.S. imports of prototypes are negligible.

TA-W-12, 218; United Technologies Corp., Control Products Div., Franklin, TN

A survey of customers indicated that with respect to gas manifolds, increased imports did not contribute importantly to worker separations at the firm. With respect to gas valves, any sales declines were the result of normal business fluctuations.

In the following case, the investigation revealed that criterion (1) has not been met.

TA-W-11, 810; Jacoby-Bender, Inc., Woodside, NY

In each of the following cases the investigation revealed that workers of the subject firm did not produce an article within the meaning of section 223(3) of the Act.

TA-W-12, 825; American Handling Equipment, Inc., Cambell Hall, NY
TA-W-13, 052; S.M. Astro Drilling & Blasting Co., Inc., Kingston, NY
TA-W-72, 748; Zevon Textitle-Service Co., Inc., New York, NY

Affirmative Determinations

TA-W-11, 001; Farrel Connecticut Div., U.S.M. Corp., Ansonia and Derby, CT

A certification was issued in response to a petition received on September 15, 1980 covering all workers separated on or after March 23, 1980.

TA-W-10, 354; International Minerals & Chemical Corp., Orrington, ME

With respect to workers producing sodium chlorate, a certification was issued in response to a petition received on August 13, 1980 covering those workers separated on or after February 1, 1980 and before October 1, 1980.

I hereby certify that the aforementioned determinations were issued during the period December 14–18, 1981. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 22, 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-36925 Filed 12-28-81; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Michigan

This notice announces the ending of the Extended Benefit Period in the State of Michigan, effective on November 28, 1981.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State reaches the state trigger rate set in the Act and the State law. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Michigan on September 30, 1979, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State of Michigan has determined that the rate of insured unemployment in the State for period consisting of the week ending on November 7, 1981, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in that State.

Therefore, the Extended Benefit Period in that State terminated with the week ending on November 28, 1981.

Information for Claimants

The state employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State of Michigan should contact the nearest Branch Office of the Michigan Employment Security Commission in their locality.

Signed at Washington, D.C., on December 18, 1981.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 81-36927 Filed 12-28-81; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether

absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 7, 1982.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 7, 1982.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 21st day of December 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Armco, Inc., Kansas City Works (USWA)	Kansas City, Mo	12/14/81	12/11/81	TA-W-13,139	Rods, bolts, nuts, rope—steel and wire.
Berkeley-Davis, Inc. (UAW)	Danville, Ill	12/15/81	12/11/81	TA-W-13,140	Equipment—welding, resistance and arc.
Boss Manufacturing Company (ACTWU)	Chillicothe, Mo	12/14/81	12/4/81	TA-W-13,141	Gloves—work.
Ford Motor Co., Engine Plant No. 1 (UAW)	Brook Park, Ohio	12/4/81	11/25/81	TA-W-13,142	Engines.
Ford Motor Co., Engine Plant No. 2 (UAW)	Brook Park, Ill	12/4/81	11/25/81	TA-W-13,143	Engines.
Ford Motor Co., Cleveland Casting Plant (UAW)	Brook Park, Ill	12/4/81	11/25/81	TA-W-13,144	Engines.
KY & J Shake Co. (Company)	Chehalis, Wash	12/15/81	12/10/81	TA-W-13,145	Shakes—wood.
Laconia Needle Manufacturing Co., Inc. (Workers)	Laconia, N.H	12/15/81	12/9/81	TA-W-13,146	Needles—knitting.
Limerick Footwear, Inc. (workers)	Limerick, Maine	12/15/81	12/9/81	TA-W-13,147	Shoes, boots—men's.
Rheem Manufacturing (USWA)	Linden, N.J	12/14/81	12/7/81	TA-W-13,148	Drums—steel.
The Baltimore Luggage Company (company)	Baltimore, Md	12/15/81	12/9/81	TA-W-13,149	Luggage—aluminum.
Charley Company, Inc. (workers)	Hialeah, Fla	12/15/81	11/30/81	TA-W-13,150	Webbing—belts seat.
Firestone Tire & Rubber Company (workers)	Des Moines, Iowa	12/14/81	12/10/81	TA-W-13,151	Tires car, radial, tractor.
Fitzgerald Planting Company (workers)	Detroit, Mich	12/15/81	12/10/81	TA-W-13,152	Parts—auto, plating, dying, chroming.
Inferno Fashions, Inc. (workers)	New York, NY	12/4/81	11/30/81	TA-W-13,153	Sportswear—jr's.
Tri Star Manufacturing (Company)	Fort Smith, Ark	12/15/81	12/11/81	TA-W-13,154	Jackets—men's ladies' boys'.
Vardaman Sportswear (company)	Vardaman, Miss	12/15/81	12/11/81	TA-W-13,155	Jackets—men's ladies' boys'.
Zenith Radio Corp., Plant No. 1 (Independent Radionic Worker of America).	Chicago, Ill	12/17/81	12/14/81	TA-W-13,156	Television assembly.
Zenith Radio Corp., Plant No. 2 (Idenpendent Radionic Workers of America).	Chicago, Ill	12/17/81	12/14/81	TA-W-13,157	Television assembly.
Zenith Radio Corp., Plant No. 6 (Idenpendent Radionic Workers of America).	Chicago, Ill	12/17/81	12/14/81	TA-W-13,158	Television assembly.

[FR Doc. 81-38924 Filed 12-28-81; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Application Nos. D-2975, D-2978, and D-2979]

Proposed Exemption for Certain Transactions Involving the Bell System Trust Located in New York, New York

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) transactions relating to the proposed purchase by Atel I, Inc. (the Feeder Corp.) for the Bell System Pension Plan Trust and the Bell System Management Pension Trust (the Plans) of equity interests and mortgage interests in certain improved real property (the Property); (2) the proposed continuation by the Feeder Corp. of existing leases of space in the Property to three tenants, including a Plan fiduciary, who provide services to the Plans; and (3) the proposed leasing of space in the Property to other current or future tenants who will provide services to the Plans in the future. The proposed exemption, if granted, would affect First Chicago Realty Services Corporation (Lender 1), The Citizens and Southern National Bank (Lender 2), Eastdil Adviser, Inc. (the Fiduciary), the G. A. Dexter Company (the Realtor), Equitable Life Assurance Society of the United States (Tenant 1), Georgia Building Services, Inc. (Tenant 2), Peachtree Summit Developers (the Developer) the Feeder Corp., the Plans, the Bell System Trust (the Trust), participants and beneficiaries of the Plans and the Trust, other current or future tenants in the Property who provide services to the Plans in the future, and other persons (such as escrow agents and Plan trustees) participating in the subject transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before February 5, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20216, Attention: Application Nos. D-2975, D-2978, and D-2979. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S.

Department of Labor, Room N–4677, 200 Constitution Avenue, NW, Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department of Labor, telephone (202) 523–8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) though (E) of the Code. The proposed exemption was requested in an application filed on behalf of Lender 1, Lender 2, the Fiduciary, and the Realtor, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued soley by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. *The Plans and the Trust.* The Trust is a group trust which is used for the investment on an undivided basis of the assets of two additional trusts known as the Bell System Pension Plan Trust and the Bell System Management Pension Plan Trust, which were established to fund benefits under the Plans. The Plans result from the consolidation, effective October 1, 1980, of the 33 predecessor pension plans for employees of American Telephone & Telegraph Company (AT&T) and its subsidiaries. The Plans provide pension and death benefits to eligible employees and their beneficiaries. The Bell System Management Pension Plan covers all management and salaried employees of AT&T and of any of its subsidiaries which participates in the Plan, other than a small group of management and salaried employees who are covered under the Bell System Pension Plan. The Bell System Pension Plan covers employees of AT&T and its subsidiaries which participate in the Plan, who are in a bargaining unit represented by one of the unions named below or who are nonrepresented employees in similar job titles or classifications, including the small group of management or salaried employees not covered by the Bell System Management Pension Plan. The Bell System Pension Plan has been collectively bargained on a national basis for all participating employers and their respective collective bargaining units with the following unions (the Unions): The Communication Workers of America, 1925 K Street, NW., Washington, D.C. 20006; The International Brotherhood of Electrical Workers, 1125–15th Street, NW., Washington, D.C. 20005; and The Telecommunications International Union, 2341 Whitney Avenue, Hamden, Connecticut 06518. Both Plans have a one year of service and age 25 requirement for eligibility to participate in the pension provisions of the Plans. The Plans covered approximately 1,100,000 participants as of December 31, 1980. As of December 9, 1981, there were approximately 920,000 active employees participating in the pension provisions of the Plans and approximately 1,050,000 active employees, including the above-mentioned 920,000, who participate in the death benefit provisions. To promote diversification, AT&T has arranged for investment and reinvestment of Trust assets through the use of the professional services of more than 100 independent trustees (including Lender 2 and an affiliate of Lender 1) and independent investment managers (including the Fiduciary and Tenant 1). The fair market value of assets of the Bell System Management Pension Plan Trust as of December 31, 1980, was $17,547,173,955, and the fair market value of the assets of the Bell System Pension Plan Trust as of the same date was $15,976,550,205. As of June 30, 1981, the Fiduciary was managing $145,653,449 of the Plans' assets with an additional amount of $36,926,000 committed but still unfunded (i.e., real estate transactions closed but not yet funded) and an authorization for an additional $284,143,000 with respect to future outstanding commitments.

2. *The Fiduciary.* The Fiduciary is an investment adviser registered under the Investment Advisers Act of 1940, as amended, and is based in New York City. It is wholly owned by Eastdil Realty, Inc., which was founded in 1967 and has extensive experience in the financing and management of multi-tenant income producing real estate. The Fiduciary was incorporated in 1978 for the sole purpose of investing and managing real estate assets for large pension plans. The Fiduciary currently manages more than $450,000,000 in corporate pension assets on a separate account basis, consisting of multi-tenant commercial and industrial properties. The Fiduciary's investment personnel directly involved in approving the subject transactions collectively have over 35 years of real estate experience. On June 1, 1981, the Fiduciary entered into investment management agreements, effective as of October 1, 1980, with AT&T. Pursuant to these agreements, the Fiduciary was retained to act as investment manager for certain assets constituting part of the Plans. Prior to June 1, 1981, the Fiduciary had been serving as investment manager for the predecessor Pacific Telephone and Telegraph Company pension trusts, which became consolidated into the Plans, as mentioned in paragraph 1, above. The Fiduciary represents that to the best of its knowledge (a) neither the Fiduciary nor any of its officers, directors, stockholders, employees, or agents is affiliated with or otherwise related to Lender 1, Lender 2, the Realtor, the Developer, Tenant 1, Tenant 2, or any of their affiliates; (b) none of the applicants has in any manner influenced the exercise of the Fiduciary's judgment in its fiduciary capacity with respect to the Plans; and (c) neither the Fiduciary nor any of its officers, directors, stockholders, employees, or agents influence the exercise of Lender 1's, Lender 2's, or Tenant 1's judgment as a Plan fiduciary. Under the investment manager agreements between AT&T and the Fiduciary, AT&T causes the Fiduciary to be paid, out of assets not constituting any part of the Plan assets under the management of the Fiduciary, an annual fee equal to 1% of the appraised value of each real estate equity investment managed for the Plans by the Fiduciary. The appraised value of any such investment for purposes of calculating the Fiduciary's fee is the fair market value as determined by a qualified independent appraiser who is a Member of the Appraisal Institute, at least once for each fiscal year of the Plans during which such property is owned, except that until the first such appraisal is rendered the appraised value is deemed to be the purchase price of such investment. The Fiduciary's fee with respect to the subject transactions is at the identical rate as the fee payable with respect to any other real estate equity investment made by the Fiduciary for the Plans. The Fiduciary represents further that it will not receive any consideration for its own personal account, in connection with th subject transactions, from any party dealing with the Plans.

3. *The Feeder Corp.* The Feeder Corp. is a Delaware corporation wholly owned by the Plans which will apply for an exemption from federal income tax under section 501(c)(2) of the Code.[1] The Feeder Corp. was organized by the Fiduciary, acting for the Plans. All of the officers and directors of the Feeder Corp. are employees of the Fiduciary. The Feeder Corp. has no employees. Subject to the granting of the proposed exemption, the Fiduciary has agreed to acquire the Property on behalf of the Plans by causing the Feeder Corp. to acquire the Property.

4. *Lender 1.* Lender 1 is a Chicago based real estate company which is a wholly owned subsidiary of First Chicago Corporation. The First National Bank of Chicago, a separate wholly owned subsidiary of First Chicago Corporation, is a trustee of the Plans responsible for the investment of a portion of the Plans' assets which is not involved in any of the subject transactions. Lender 1's interest in the outstanding principal balance on the first mortgage loan on the Property was approximately $28,500,000 as of September 15, 1981.

5. *Lender 2.* Lender 2 is a national bank and a wholly owned subsidiary of Citizens and Southern Georgia Corporation. Lender 2 maintains its principal offices in Atlanta, Georgia, and engages in banking activities at numerous locations throughout Georgia. Lender 2 serves as a trustee of the Plans responsible for the investment of a portion of the Plans' assets which is not involved in any of the subject transactions. Lender 2's interest in the outstanding principal balance on the first mortgage loan on the Property was approximately $8,000,000 as of September 15, 1981.

6. *The Realtor.* The Realtor is a real estate firm headquartered in Atlanta, Georgia. The Realtor provides real estate investment consultation, brokerage, management, and development services. The Realtor organized the subject purchase transactions, negotiating separately and independently with each of the other parties involved, as described hereinafter. Initially, the Realtor and the Developer reached an oral agreement for the Realtor to acquire the Property from the Developer, subject to the mortgage loan on the Property. The Realtor then entered into separate independent negotiations (a) to obtain an option to acquire Lender 2's interest in the mortgage loan on the Property, (b) to obtain an option to acquire Lender 1's interest in the mortgage loan on the Property, and (c) to sell the equity in the Property and such options to the Plans, which were represented by the Fiduciary. The Realtor also leases space in the Property.

7. *The Developer.* The Developer is a Georgia limited partnership which was organized for the purchase and development of the Property. The partners of the Developer are identified below:

Name	Type of partner	Interest (percent)
SMC Realty Corp., a Georgia corporation.	General	0.1
Fred R. Kaye, an individual resident of the State of Georgia.	Managing General Partner.	24.95
Trust Company Bank and Rosanne Diamond, trustees of trust created under the Will of Phillip Diamond, deceased.	Limited	24.95
Oppenheimer Peachtree Associates, a Georgia limited partnership.	do	50

It is represented that neither the Developer nor any of its partners are officers, directors, or employees of the Fiduciary or AT&T and that neither the Developer nor any of its partners have any direct or indirect control of or any influence over the Fiduciary or AT&T. The Developer is the present owner of the equity interests in the Property and is the present property manager.

8. *Tenant 1 and Tenant 2.* Tenant 1 is a major life insurance company organized and incorporated in New York with its headquarters in New York City. Tenant 1 is an investment manager with respect to certain Plan assets which are not involved in any of the subject transactions and is presently a tenant in the Property. Tenant 2 is an Atlanta based building maintenance services company. Tenant 2 provides building maintenance services for the Property and is presently a tenant in the Property.[2]

9. *The Property.* The Property is located at 401 West Peachtree Street, NE., in the central business district of Atlanta, Georgia, and is commonly known as the Peachtree Summit Building. The Property is an improved 30-story reinforced concrete building with glass curtain wall encasement constructed between the years 1974 and 1976 for use as an office and commercial building. The building contains a gross floor area of approximately 850,000 square feet and net rentable area of approximately 769,000 square feet. The Property also includes a 12-level ramp-type reinforced concrete parking garage located at 501 West Peachtree Street, NE.—approximately one block north of the office building—and the land on which the building and parking lot stand. It is estimated that at the present time the office building is approximately 80% occupied. The Developer presently holds title to the Property.

10. *The Mortgage.* The Property is subject to a first mortgage loan extended to the Developer by Lender 1 and Citizens and Southern Realty Investors, the latter having subsequently assigned its interest to Lender 2. The outstanding principal balance on the loan as of September 15, 1981, was approximately $36,500,000. Although interest accrues on the loan at a 9% annual rate, interest is deferred except to the extent it can be paid out of net cash flow. However, minimum interest is payable monthly at the annual rate of 6.88% on principal up to $34,000,000 and 9% on principal in excess of $34,000,000. Interest at the minimum interest rate has been paid through September 16, 1981. Deferred interest as of that date was approximately $8,800,000. As of September 15, 1981, there were additional amounts available to be funded for specific purposes (such as to construct improvements required by tenants) under the loan agreements and the escrow account established under the loan agreements. It is contemplated that a portion of such amounts may be funded during the escrow period (see paragraph 15, below). The mortgage loan will mature on December 31, 1983. At maturity the entire principal plus the accrued but unpaid interest comes due.

11. *The Purchase Transactions—Chonological Background.* In late January 1981, the Realtor obtained a commitment from the Developer to sell the Property to the Realtor, subject to the mortgage loan on the Property. The Realtor approached the Fiduciary in February 1981 to discuss a joint venture for the purchase of the Property. However, the Fiduciary expressed an interest in acquiring all of the interests in the Property on behalf of one of its clients. Late in March 1981, the Realtor entered into negotiations with Lender 2 with a view towards obtaining an option to purchase Lender 2's interest in the outstanding mortgage loan on the Property at a discount from the total of the unpaid principal and accrued but unpaid interest on such loan. Following

[1] Section 501(c)(2) of the Code relates to corporations organized for the exclusive prupose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under section 501 of the Code, such as a tax-qualified pension trust. Such corporations are sometimes referred to as "feeder corporations" beacause their function is to feed the net income from property which they hold to an exempt organization.

[2] The Department is not proposing an exemption for the provision of services beyond that which is provided by section 408(b)(2) of the Act.

a detailed analysis of the Property, the present leases of space in the Property and the leasing market in Atlanta, Georgia, and based on its experience in commercial real estate investing for pension funds, the Fiduciary determined that it should purchase all of the interests in the Property from the Realtor on behalf of certain pension plans maintained by the Pacific Telephone and Telegraph Company for a total cost to such plans of $55,000,000. By letter dated March 24, 1981, the Fiduciary notified the Realtor that its investment committee had approved the purchase of all the interests in the Property at a total cost to such plans of $55,000,000. During the last week in April 1981, the Realtor entered into negotiations with Lender 1 with a view toward obtaining an option to purchase Lender 1's interest in the outstanding mortgage loan on the Property at a discount from the total of the unpaid principal and acrrued but unpaid interest on such loan. On June 1, 1981, pursuant to its negotiations with the Realtor, Lender 2 granted an option to the Realtor to sell its interest in the mortgage loan on the Property to the Realtor or its assignees. (This option agreement was amended on June 18 and 19, July 28, and September 14, 1981.) Also on June 1, 1981, the Fiduciary became investment manager for the Plans, effective October 1, 1980, as mentioned in paragraph 2, above. On July 15, 1981, Lender 1 granted an option to the Realtor to sell its interest in the mortgage loan on the Property to the Realtor or its assignees. (This option agreement was amended August 27, and September 4 and 11, 1981.) All of these negotiations and agreements were entered into by the Realtor with each party separately and independently. Thus, the applicants represent that when Lender 1 and Lender 2 granted their options to the Realtor, they were not aware that the Realtor might assign the options to the Plans, who could then purchase the lender's interests in the loan on the Property. Further, the applicants reprsents that not until the last week of July 1981 did the other parties realize that Lender 1 and Lender 2 are fiduciaries or affiliates of fiduciaries with respect to the Plans.

12. *Escrow Agreements and Related Agreements.* In order to preserve for the Plans the benefit of the bargain negotiated by the Fiduciary and at the same time avoid entering into prohibited transactions, all of the applicants agreed that the purchase transactions and all other steps leading up to the purchase transactions should be begun but not completed unless and until the proposed exemption is granted. Accordingly, a series of escrow agreements dated September 16, 1981 were executed which have the effect of commencing but not completing the transactions necessary for the purchase of the Property on behalf of the Plans. By executing these escrow agreements, each of the parties to the purchase transactions agreed to postpone the consummation of such transactions for an agreed period of time (the Escrow Period), which began September 16, 1981, and which will end either on the final closing date of the purchase transactions or on the date such transactions are nullified. All of the instruments and documents necessary to consummate the purchase transactions were placed in escrow on September 16, 1981, although no portion of the purchase price (see paragraph 14, below) was placed into escrow at that time. The various parties then agreed that if the purchase transactions were consummated by the end of the Escrow Period, the Feeder Corp. would acquire the interests in the Property as of September 16, 1981, by paying the purchase price. Conversely, if the purchase transactions were not consummated by the end of the Escrow Period, such transactions would be completely nullified and unwound, whereupon none of the parties involved would have any further rights or obligations in connection therewith. The escrow agreements were designed to place each of the parties to the purchase transactions in the same economic position which it would have occupied if the purchase transactions had been closed (and the purchase price had been paid) on September 16, 1981, provided the escrow conditions are met. Accordingly, if the purchase transactions are consummated by the end of the Escrow Period, the Feeder Corp. will be deemed to have taken title to the interests in the Property as of September 16, 1981, notwithstanding that the purchase transactions were not in fact consummated until several months after September 16, 1981. In such event, the escrow agreements provide that the Feeder Corp. will be entitled to (i) any net income earned on the Property during the Escrow Period, (ii) interest on the loan on the Property payable by the Developer during the Escrow Period, and (iii) any interest earned on both such amounts during the Escrow Period. Similarly, Lender 1, Lender 2, and the Realtor will each receive interest for the duration of the Escrow Period on their respective portions of the purchase price, in lieu of the interest which would have accrued to each such party during the Escrow Period if the purchase price had actually been paid, or placed into escrow, in September 16, 1981. Also, the Feeder Corp. will repay Lender 1 for all construction loan advances made by Lender 1 during the Escrow Period (to pay the cost of constructing tenant improvements in the Property) since such costs would have been paid by the Feeder Corp. had it actually owned the Property on September 16, 1981. Under the escrow agreements, the purchase transactions will be completed if the proposed exemption is granted and the notice of such grant is published in the **Federal Register** at least five business days prior to March 1, 1982. Only in such event will the Feeder Corp. pay the purchase price for the interests in the Property. If notice that the proposed exemption has been granted is not published in the **Federal Register** by February 22, 1982, the escrow agreements require a return of all documents to the appropriate parties and the purchase of the interests in the Property on behalf of the Plans will not be consummated. These escrow agreements and related agreements are described in more detail in paragraphs 13 through 16, below.

13. *Realtor-Developer Agreements.* By agreement dated September 14, 1981, the Developer agreed to sell and the Realtor agreed to buy for $24,435,000 the equity interests held by the Developer subject to the outstanding indebtedness on the Property to Lender 1 and Lender 2. Under escrow agreement dated September 16, 1981, the closing of the sale of the equity interests to the Realtor was begun on September 15, 1981 by the deposit of the title deed, assignment of leases and other appropriate documents, and a deposit of the Realtor's downpayment and certain notes with Chicago Title Insurance Company, the escrow agent. Pursuant to this escrow agreement, the Developer is obligated to continue to manage and supervise the leasing of the Property, subject to specified operating standards. This escrow agreement calls for deliveries of the appropriate documents and purchase price if the conditions for the escrow agreement have been satisfied by March 1, 1982, including the deposit by the Realtor of the balance of the purchase price presently evidenced by notes from the Realtor. This escrow agreement is not expressly conditioned upon the granting of the proposed exemption.

14. *The Feeder Corp's. Acquisitions of Equity and Mortgage Interests.* By agreement dated September 14, 1981, the Realtor agreed to sell and the Feeder

Corp., acting through the Fiduciary, agreed to buy the equity interest in the Property as well as the Realtor's option rights under its option agreements with Lender 1 and Lender 2, subject to satisfaction of the conditions which may be set forth in an escrow agreement between the parties. This contract reflects that the aggregate cost to the Feeder Corp. is $55,000,000, consisting of $25,650,000 as the price to acquire the equity interests in the Property and the options granted by Lender 1 and Lender 2; plus $22,850,000 as the price to exercise the option granted by Lender 1 to acquire its mortgage interests in the Property; plus $6,500,000 as the price to exercise the option granted by Lender 2 to acquire its mortgage interests in the Property. Under escrow agreement dated September 16, 1981, the Feeder Corp. and the Realtor placed in escrow with the escrow agent the closing statements, the title deed, the assignment of leases and other appropriate documentation in connection with the sales contract. After the proposed exemption has been granted and the other escrow conditions have been met, the Feeder Corp. will pay into escrow the purchase price plus interest thereon for the duration of the Escrow Period (see Paragraph 12, above). The final closing will then take place, involving, among other things, the delivery of (i) the title deed and other appropriate documents to the Feeder Corp., and (ii) the $25,650,000 purchase price plus the interest mentioned above to the Realtor.

15. *Option Granted by Lender 1.* As amended, this option entitled the Realtor or its assignee to purchase Lender 1's interest in the mortgage loan on the Property for a basic purchase price of $22,850,000. (The amended option also provided for payments of specified additional amounts under certain circumstances. Because these circumstances have not occurred in this case, no such additional amounts are payable by the Feeder Corp. under the amended option.) This agreement contains no restrictions regarding the persons or entities to whom the Realtor may assign its interest under the option agreement. However, the amended option provides for an escrow closing with respect to the exercise of the option on behalf of the Plans. Under an escrow agreement dated September 16, 1981, between the Realtor, the Fiduciary, a trustee of the Plans, the Feeder Corp., and an escrow agent, the Realtor deposited into escrow its assignment to the Feeder Corp. of the Realtor's rights under the amended option granted by Lender 1. By a separate escrow agreement dated September 16, 1981, Lender 1 and the Realtor entered into an agreement with the escrow agent, the Fiduciary, the Feeder Corp., and a trustee of the Plans for the escrow closing of the exercise by the Feeder Corp. of the amended option granted to the Realtor by Lender 1. No funds of the Feeder Corp. or the Plans have been deposited under either of these escrow agreements. The latter escrow agreement calls for delivery of the documents and payment into escrow of (a) the basic purchase price of $22,850,000 plus interest thereon for the duration of the Escrow Period, plus (b) amounts advanced under the loan during the Escrow Period plus interest thereon at the minimum interest rate (see paragraphs 10 and 12, above). The documents are to be delivered and the above-mentioned amounts paid into escrow after the proposed exemption is granted if notice of such grant is published by February 22, 1981. If all escrow conditions are met, including those relating to the granting of the proposed exemption, the final closing will take place immediately following the final closing described in paragraph 14, above, involving, among other things, the delivery (i) to the Feeder Corp. of the appropriate documents, the loan interest payable by the Developer during the Escrow Period plus interest thereon for such period, and the net income from the Property during the Escrow period plus interest thereon for such period (see paragraph 12, above); and (ii) to Lender 1 of the amounts mentioned in (a) and (b), above. If the escrow conditions are not met, the assignment and the exercise of this option will never be completed.

16. *Option Granted by Lender 2.* As amended, this option entitled the Realtor or its assignee to purchase Lender 2's interest in the mortgage loan on the Property for $6,500,000 plus interest thereon for the duration of the Escrow Period (see paragraph 12, above). Since Lender 2 will not advance any funds under the loan during this period, the Feeder Corp. will pay only the option price and the interest described above to exercise this option. The option as amended contains no express restrictions regarding the assignment by the Realtor of its interests under the option. However, the amended option agreement provided for an escrow closing with respect to any exercise of the option. Under an escrow agreement dated September 16, 1981, between the Realtor, the Fiduciary, a trustee of the Plans, the Feeder Corp., and an escrow agent, the Realtor deposited into escrow its assignment to the Feeder Corp. of the Realtor's rights under the amended option granted by Lender 2. By a separate escrow agreement dated September 16, 1981, Lender 2 and the Realtor entered into an agreement with an escrow agent, the Fiduciary, the Feeder Corp., and a trustee of the Plans for the escrow closing of the exercise by the Feeder Corp. of the amended option granted to the Realtor by Lender 2. No funds of the Feeder Corp. or the Plans have been deposited under either of these escrow agreements. The latter escrow agreement provides for the delivery of the documents and payment of the option price plus interest into escrow after the proposed exemption is granted if notice of such grant is published by February 22, 1981. If all escrow conditions are met, including those relating to the granting of the proposed exemption, the final closing will take place immediately following the final closing described in paragraph 14, above, by delivering (i) the appropriate documents to the Feeder Corp., and (ii) the option price plus the interest mentioned above to Lender 2. If the escrow conditions are not met, the assignment and the exercise of this option will never be completed.

17. *The Fiduciary's Opinions regarding the Purchase Transactions.* The Fiduciary states that these transactions are in the best interests of the Plans and their participants and beneficiaries because, based upon the Fiduciary's analysis of the value of the Property and the investment criteria of the Plans, the Property is a high grade commercial property which will be obtained by the Plans for a price which, in the Fiduciary's opinion, is not more than the fair market value of all the equity and mortgage interests to be acquired and is at a considerable discount from the replacement cost of the land and buildings. After conducting a detailed analysis of the Property, all present leases of space therein (including the leases to the Realtor, Tenant 1, and Tenant 2) and the general conditions of the Atlanta, Georgia leasing market, as well as the costs of construction today and the value of the parking facility included in the Property, the Fiduciary determined that the Property has a present fair market value of $55,000,000, the aggregate purhase price to the Plans of the equity and mortgage interests in the Property. The Fiduciary also believes that the payments of interest on such aggregate purchase price for the duration of the Escrow Period (as described in paragraphs 14, 15, and 16, above) and the repayment of loan advances during such period (as described in paragraph

15, above) are reasonable. (See also paragraph 12, above.) It was the Fiduciary's opinion that the present fair market value of the Property was substantially below its replacement cost and the potential future value of the equity interests considering that the rental rates on the building's existing leases are considerably below rates for space in comparable properties. In determining that the Plans were contracting to pay a reasonable aggregate price for the purchase of the equity and mortgage interests in the Property, the Fiduciary was not aware of the profit to the Realtor on the sale of the equity to the Plans. The Realtor's purchase price for the equity interests and the options will total $24,435,300. The Plan's purchase price for the equity intersts and the options will total $25,650,000, which is $1,214,700 greater than the Realtor's purchase price. However, the Fiduciary considers the Realtor's profit to be irrelevant to the Fiduciary's investment decision to acquire the Property on behalf of the Plans.

18. *The Lease with Tenant 1.* Tenant 1 occupies approximately 4% of the available rental space pursuant to a five-year lease executed on February 22, 1980. This lease also provides Tenant 1 with an option to lease additional space, a right of first refusal on further space, and a right to renew its lease for an additional five-year period. This lease was entered into on an arm's-length basis prior to the subject transactions. This lease will not constitute a prohibited transaction unless and until the Feeder Corp., on behalf of the Plans, becomes the owner of the Property. The Fiduciary states that the amount of rent payable under this lease at the time it was entered into was not less than the fair rental value of the premises leased by Tenant 1. The lease requires the tenant to pay to the landlord the tenant's share of the landlord's increase in operating expenses in each year over an agreed base year (1980). The Fiduciary has determined that this lease is beneficial to the Plans and should be continued because it cannot be unilaterally terminated by the Plans and because it would be difficult to find a replacement tenant of comparable quality and size.

19. *The Lease with Tenant 2.* The current lease with Tenant 2 was entered into July 15, 1980 and succeeds the original lease with this tenant, which began June 7, 1977 and expired June 30, 1980. The current lease is for a term of three years and requires the tenant to pay to the landlord the tenant's share of the landlord's increase in operating expenses in each year over an agreed base year (1980). The Fiduciary believes that the amount of rent payable under this lease at the time it was entered into was not less than the fair rental value of the premises leased by Tenant 2. The terms of the current lease are similar to those of leases with tenants in the Property who provide no services with respect to the Property. This lease will not constitute a prohibited transaction unless and until the Feeder Corp., on behalf of the Plans, becomes the owner of the Property. The Fiduciary has determined that this lease should be continued because it cannot be unilaterally terminated by the Plans and because it would be beneficial to the Plans to have the Property's maintenance contractor on the premises.

20. *The Lease with the Realtor.* The Realtor is a tenant in the Property pursuant to a lease with the Developer negotiated on or about January 30, 1981, dated June 30, 1981, and amended September 12, 1981. The Realtor will provide property management and leasing agent services with respect to the Property, pursuant to arrangements regarding such services between the Realtor and the Fiduciary.[3] Property management services are now provided by the Developer. Although the Realtor has not yet begun to provide such services, it wil begin to do so sometime before the Feeder Corp. becomes the owner of the Property. This lease will not constitute a prohibited transaaction unless and until the Feeder Corp., on behalf of the Plans, becomes the owner of the Property. The premises leased by the Realtor represents approximately 0.5% of the net rentable area in the building. The lease is for a term of ten years and requires the tenant to pay to the landlord the tenant's share of the landlord's increase in operating expenses in each year over an agreed base year (1982). The rental rate provided for in the lease was negotiated by the Realtor and the Developer within the context of the Realtor's negotiations for the purchase of the equity in the Property from the developer. The Fiduciary believes that the rental rate under the lease, considered alone, is less than the fair rental value of the premises leased by the Realtor. Nevertheless, the Fiduciary believes that the lease should be continued and that an exemption should be granted with respect to this lease because (i) the lease connot be unilaterally amended or terminated by the Fiduciary or the Feeder Corp. and the Realtor will not in any event consent thereto, (ii) the Fiduciary took the rental rate of the Realtor's lease (together with all other leases in the Property) into consideration in determining that the Plans were not paying more than fair market value for the Property, (iii) in the absence of an administrative exemption, the Feeder Corp. will have to honor the Realtor's lease but will lose the benefit of the Realtor's property management and leasing services to the Property, which services the Fiduciary considers beneficial to the plans, and (iv) the Fiduciary has determined that if the difference between the rental rate of the Realtor's lease and the fair rental value thereof were considered to be additional compensation to the Realtor for its property management and leasing services to the Property, the total compensation to the Realtor for providing such services would still be reasonable. The Fiduciary will also monitor the Realtor's obligations as tenant under this lease.

21. *Leases with Other Tenants Who Provide Furture Services.* The applicants believe it is likely that other Plan fiduciaries or service providers may seek to become tenants in the Property or may be required to become tenants in connection with the provision of management, leasing, maintenance, or other services. They represent that leases with such persons will be arranged on an arm's-length basis and approved by a Plan trustee or investment manager which is not affiliated with or otherwise related to such parties in interest in any manner which would affect the exercise of its judgement as a Plan fiduciary. As long as the Fiduciary serves as an investment manager to the Plans, it will directly control the activities of all persons providing services for the Property, as well as the leasing of space in the Property, and will monitor the obligations of the tenants thereunder, including those tenants who are parties in interest.

22. *Costs of All of the Subject Transactions.* The Fiduciary will pay the compensation of its employees and all items of an administrative or overhead nature incurred by the Fiduciary in connection with the subject transactions. AT&T is to direct Bank of America, N.T. & S.A., as trustee of the Plans, upon presentation of invoices or other appropriate evidence therefor, to pay the fees of other persons furnishing services to the Plans in connection with the subject transactions, including title insurance and other fees of the title company, and the fees of an engineering company, an accounting firm, and a law firm engaged by the Fiduciary, all of which fees aggregated approximately $161,000 as of October 1, 1981. The

[3] Please see footnote 2, above.

Fiduciary believes that no such fees are being paid in violation of the provisions of the Act.

23. *Summary.* In summary, the applicants state that the subject transactions would meet the criteria for an exemption provided by section 408(a) of the Act because: (a) The terms of each purchase transaction were negotiated separately on an arm's-length basis by independent parties who did not realize at the time of such negotiations that parties in interest with respect to the Plans were involved in the transactions; (b) the terms of the leases with Tenant 1 and Tenant 2 were negotiated separately on an arm's-length basis by independent parties before the plans or the Feeder Corp. became associated with the Property; (c) an independent fiduciary which has extensive experience with transactions of this type believes that all of the subject transactions are in the best interests of the Plans; (d) such independent fiduciary will monitor both the execution of all the purchase transactions affecting the Plans or the Feeder Corp. and also the operation of the subject leases; (e) such independent fiduciary believes that (i) the aggregate purchase price to be paid by the Feeder Corp. for the Property does not exceed the fair market value of the Property, (ii) the interest on such purchase price required to be paid by the Feeder Corp. represents reasonable compensation to the Realtor, Lender 1, and Lender 2 for the loss of earnings on the purchase price for the duration of the Escrow Period, and (iii) the repayments by the Feeder Corp. of loan advances made by Lender 1 are required to reimburse Lender 1 for expenses properly chargeable to the Fedder Corp.; (f) such independent fiduciary has determined that the rental rates of the leases with Tenant 1 and Tenant 2 were at fair rental value when such leases were entered into; (g) such independent fiduciary believes that although the rental rate under the lease with the Realtor is below the rental rate under the lease with the Realtor is below the fair rental value of the premises leased by the Realtor, the sum of the difference between these two rates plus the fee to be paid to the Realtor for its services as property manager and leasing agent for the Property represents reasonable compensation to the Realtor for such services; (h) all of the subject leases provide for increases in rental payments to compensate for yearly increases in the landlord's operating expenses; (i) less than 0.2% of the Plans' total assets will be involved in the subject transactions; and (j) most of the other parties to the subject transactions are banks (or bank affiliates), insurance companies, or registered investment advisors and subject to supervision by other federal and state authorities regarding their exercise of fiduciary responsibilities.

Notice to Interested Persons

Notice of the proposed exemption will be posted on all bulletin boards normally used for employee notices of all companies whose employees are covered by the Plans within six business days of the date of publication of the notice of pendency in the **Federal Register.** Such notice will contain a copy of the notice of pendency published in the **Federal Register** and a statement advising interested persons of their rights to comment and to request a hearing on the exemption. Notification will also be provided to the Unions by first class mail within the time period described above.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the following transactions:

(1) Lender 1's grant to the Realtor of an assignable option to acquire Lender 1's interest in the mortgage loan pertaining to the Property, as described in paragraph 15, above;

(2) Lender 2's grant to the Realtor of an assignable option to acquire Lender 2's interest in the mortgage loan pertaining to the Property, as described in paragraph 16, above;

(3) The acquisition from the Realtor by the Feeder Corp., acting through the Fiduciary as investment manager for certain assets of the Plans, of the equity interests in the Property and of the options granted by Lender 1 and Lender 2, all as described in paragraph 14, above, provided that the aggregate purchase price paid by the Feeder Corp. for such equity interests and such options does not exceed the fair market value of such equity interests and such options on the closing date of the purchase;

(4) The acquisition by the Feeder Corp., acting through the Fiduciary as

investment manager for certain assets of the Plans, of Lender 1's interests in the mortgage loan pertaining to the Property by means of the exercise by the Feeder Corp. of the option granted to the Realtor by Lender 1, as described in paragraph 15, above, provided that the price paid by the Feeder Corp. to exercise such option does not exceed the fair market value of such mortgage interests on the closing date of the purchase;

(5) The acquisition by the Feeder Corp., acting through the Fiduciary as investment manager for certain assets of the Plans, of Lender 2's interests in the mortgage loan pertaining to the Property by means of the exercise by the Feeder Corp. of the option granted to the Realtor by Lender 2, as described in paragraph 16, above, provided that the price paid by the Feeder Corp. to exercise such option does not exceed the fair market value of such mortgage interests on the closing date of the purchase;

(6) The continuation by Tenant 1 of its status as a tenant in the Property, including the potential future exercise by Tenant 1 of its additional space and first refusal options and its renewal options under its existing lease, and including renegotiations of its lease under terms and conditions which are no less favorable to the Feeder Corp. than the lease terms and conditions which are customary for similarly situated tenants in similarly situated buildings in the Atlanta, Georgia area;

(7) The continuation by the Realtor of its status as a tenant in the Property under its current lease, including the renegotiation of such lease under terms and conditions which are no less favorable to the Feeder Corp. than the lease terms and conditions which are customary for similarly situated tenants in similarly situated buildings in the Atlanta, Georgia area;

(8) The continuation by Tenant 2 of its status as a tenant in the Property under its current lease, including the renegotiation of such lease under terms and conditions which are no less favorable to the Feeder Corp. than the lease terms and conditions which are customary for similarly situated tenants in similarly situated buildings in the Atlanta, Georgia area; and

(9) The leasing of space in the Property by other present or future tenants in the Property who may provide services (including Plan fiduciaires) to the Plans in the furture, provided that the terms and conditions of any such lease are no less favorable to the Feeder Corp. then the lease terms and conditions which are customary for similary situated tenants in similarly situated buildings in the Atlanta, Georgia area, and provided further that any such lease is approved and monitored on behalf of the Feeder Corp. by a Plan trustee or investment manager which is not affiliated or otherwise related to such service-provider in any manner which would affect the exercise of such trustee's or investment manager's judgment as a Plan fiduciary.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 22nd day of December 1981.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, United States Department of Labor.

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Office of Pension and Welfare Benefit Programs

Proposed Class Exemption for Transactions Involving Certain Residential Mortgage Financing Arrangements; Extension of Comment Period

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of extension of comment period.

SUMMARY: The Department of Labor (the Department) is extending the comment period on the proposed class exemption for transactions involving certain residential mortgage financing arrangements as set forth in the notice of pendency published in the Federal Register at 46 FR 58773 (December 3, 1981). This action is being taken in view of requests by certain members of the public that additional time to prepare comments be provided to them, and in view of the importance of the proposed class exemption.

DATE: The comment period is extended through February 4, 1982.

ADDRESS: Written comments on the proposed class exemption should be submitted, preferably in triplicate, to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Applications D-1937 and D-2004.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C-4526, Washington, D.C. 20210, (202) 523-6915. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On December 3, 1981, the Department issued a notice of pendency before the Department of a proposed class exemption from the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by sections 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) of the Code. That notice invited all interested persons to submit, on or before January 4, 1982, written data, views or arguments concerning the proposed class exemption. The proposed class exemption, if granted, will exempt transactions related to the issuance by an employee benefit plan of a commitment to provide mortgage financing to purchasers of certain residential construction and to the provision of loans pursuant to such commitments, if the conditions of the proposed exemption are met. If granted, the proposed exemption would affect participants and beneficiaries of employee benefit plans involved in such transactions, certain employers who contribute to such plans and other persons engaging in the described transactions.

The Department has received requests from certain members of the public that the comment period in this matter be extended to February 4, 1982. The requesting parties state that they need additional time to prepare comments, and the Department believes that it is appropriate to grant such additional time. Accordingly, the Department has determined to extend the comment period.

Notice of Extension of Comment Period

Notice is hereby given that the period of time for the submission of public comments on the proposed class exemption to permit transactions related to the issuance by an employee benefit plan of a commitment to provide mortgage financing to purchasers of certain residential construction and to the provision of loans pursuant to such commitments so set forth in the notice at 46 FR 58773 (December 3, 1981) is hereby extended to February 4, 1982.

All interested persons are invited to submit written data, views or arguments concerning the proposed class exemption to the above address on or before February 4, 1982.

Signed at Washington, D.C., this 23rd day of December 1981.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-37117 Filed 12-28-81; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

Senior Executive Service; Schedule for Awarding Performance Awards (Bonuses)

The Office of Personnel Management, in paragraph 3(b) of its Memorandum to Heads of Departments and Agencies, dated July 21, 1980, recommends that each agency "publish a notice in the **Federal Register** of the Agency's schedule for awarding bonuses at least 14 days prior to the date on which the awards will be made."

Accordingly, the Department of Labor announces that bonuses will be paid by January 15, 1982.

For Further Information Contact: Mr. Frank A. Yeager, Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, D.C. 20210.

Signed at Washington, D.C., this 23rd day of December 1981.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 81-37004 Filed 12-28-81; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), as amended notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting on Monday, Tuesday, and Wednesday, January 18–20, 1982. The meetings will be held in Rooms 418 and B–100, Page Building 1, 2001 Wisconsin Avenue, NW., Washington, D.C.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations and State and local government, was established by Congress by Pub. L. 95–63, on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit other reports as may from time to time be requested by the President or Congress.

The tentative Agenda is as follows:

Monday, January 18, 1982

9:00 a.m.–12:00 Noon
Plenary
9:00 a.m.–9:15 a.m.
- Announcements

9:15 a.m.–11:15 a.m.
- Discussion of Oceanic and Atmospheric Issues by Members

11:15 a.m.–12:00 Noon
- William Woodward Staff Director, Subcommittee on Coast Guard and Navigation Committee on Merchant Marine and Fisheries

Topic: Oversight Report on Coast Guard
12:00 Noon–1:00 p.m.
Lunch
1:00 p.m.–5:00 p.m.
Panel Meetings
1:00 p.m.–3:00 p.m.
- Coast Guard (Room 418)

Topic: Organizing Session
3:00 p.m.–5:00 p.m.
- Environment and Regulations Co-Chairmen: Sylvia A. Earle, Michael R. Naess

(Room 418)
Topic: Offshore Diving Regulations
3:00 p.m.–5:00 p.m.
- Weather Services Chairman: Warren Washington (Room B–100)

Topic: Worksession—Draft Report
5:00 p.m.
Recess

Tuesday, January 19, 1982

8:30 a.m.–12:00 Noon
Panel Meetings
8:30 a.m.–12:00 Noon
- Environment and Regulations Co-Chairmen: Sylvia A. Earle, Michael R. Naess

(Room 418)
Topic: Clean Water Act—Section 404 (Permits)
Speakers: Department of the Army, Department of Interior
8:30 a.m.–12:00 Noon
- Hydrology Chairman: Paul Bock (Room B–100)

Topic: Worksession—Draft Report
12:00 Noon–1:00 p.m.
Lunch
1:00 p.m.–3:00 p.m.
Plenary
- Review of Action Items
- Panel Progress Reports
- Other Business

3:00 p.m.
Adjourn (Regular NACOA Meeting)
3:00 p.m.–6:00 p.m.
Panel Meeting
- Marine Minerals Chairman: Burt Keenan (Room 418)

Topic: Review, Revision, and Discussion of Draft Panel Report
6:00 p.m.
Recess

Wednesday, January 20, 1982

8:30 a.m.–3:00 p.m.
Panel Meetings (Continued)
8:30 a.m.–3:00 p.m.
- Marine Minerals Chairman: Burt Keenan (Room 418)

Topic: Review, Revision, and Discussion of Draft Report
9:00 a.m.–3:00 p.m.
- Marine Transportation Chairman: Don Walsh (Room B–100)

Topic: Review, Revision, and Discussion of Draft Report
3:00 p.m.
Adjourn

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235. The telephone number is 202/653–7818.

Dated: December 22, 1981.

Steven N. Anastasion,

Executive Director.

[FR Doc. 81-36974 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL SCIENCE FOUNDATION

Subcommittee on Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Ecology of the Advisory Committee for Environmental Biology.
Date and time: January 21 & 22, 1982; 8:30 a.m. to 5:00 p.m. each day.
Place: Room 338, National Science Foundation, 1800 G St., NW, Washington, D.C. 20550.

Type of meeting: Part Open—Open January 22, 1982, 3:00 p.m. to 5:00 p.m.; Closed—January 21, 1982, 8:30 a.m. to 5:00 p.m. and January 22, 1982, 8:30 a.m. to 3:00 p.m.

Contact person: Dr. Gary W. Barrett, Program Director, Ecology Program, (202) 357–9734, Room 336, National Science Foundation, Washington, D.C. 20550.

Summary minutes: May be obtained from contact person, Dr. Barrett, at above stated address.

Purpose of meeting: To provde advice and recommendations concerning support for research in ecology. Open part of the meeting to discuss long-range plans for the Ecology Program.

Agenda: Closed—To review and evaluate research proposals and projects as part of the selection process of awards; Open—January 22, 1982, 3:00 p.m. to 5:00 p.m. Discussion to include long-range plans for the Ecology Program.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of the Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

December 23, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-37071 Filed 12-28-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Measurement Methods and Data Resources of the Advisory Committee for Social and Economic Science; Meeting

In accordance with the Federal Advisory Committee Act, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Measurement Methods and Data Resources of the Advisory Committee for Social and Economic Science.

Date and time: January 22, 1982: 9:30 AM to 5:00 PM; January 23, 1982: 9:00 AM–5:00 PM.

Place: Room 642, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Type of meeting: Part Open—January 22, 1982; 9:30 AM to 12:00PM; Closed—January 22, 1982: 1:00 PM to 5:00 PM; January 23, 1982: 9:00 AM to 5:00 PM.

Contact person: Dr. Murray Aborn, Program Director, Measurement Methods and Data Resources, Room 312, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7913.

Summary of minutes: May be obtained from the contact person Dr. Murray Aborn at the above address.

Purpose of subcommittee: To provide advice and recommendations concerning support for research and research-related projects in Measurement Methods and Data Resources.

Agenda: Open: 9:30 AM to 12:00 PM, January 22, 1982—Discussion of budgetary outlook and recent program activities; Closed: 1:00 PM to 5:00 PM, January 22, 1982; 9:00 AM to 5:00 PM, January 23, 1982—Review and evaluation of research and research-related proposals as part of the award selection process.

Reason for closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

December 23, 1981.

[FR Doc. 81-37072 Filed 12-28-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Political Science of the Advisory Committee for Social and Economic Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Political Science of the Advisory Committee for Social and Economic Science.

Date and time: January 21–22, 1982, 9:00 a.m. to 5:00 p.m.

Place: Room 421, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed—9:00 a.m to 5:00 p.m., January 21–22, 1981.

Contact person: Dr. Frank P. Scioli, Jr., Acting Program Director, Political Science Program, Room 413, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357–7534.

Purpose of subcommittee: To provide advice and recommendations concerning research in Political Science.

Closed: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

December 23, 1981.

[FR Doc. 81-37070 Filed 12-28-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Population Biology and Physiological Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Population Biology and Physiological Ecology of the Advisory Committee for Environmental Biology.

Date and time: January 28 and 29, 1982—8:30 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G St., NW, Washington, D.C. 20550.

Type of meeting: Part Open—Open January 29, 1982, 10:00 a.m.–12:00 p.m. and from 1:30 p.m.; Closed—January 28, 1982, 8:30 a.m. to 5:00 p.m. and January 29, 1982, 8:30 a.m. to 10:00 a.m.

Contact person: Dr. Jerry F. Downhower, Program Director, Population Biology and Physiological Ecology Program, (202) 357–9728, Room 336, National Science Foundation, Washington, D.C. 20550.

Summary minutes: May be obtained from contact person, Dr. Downhower, at above stated address.

Purpose of meeting: To provide advice and recommendations concerning support for research in population biology and physiological ecology. Open part of the meeting to discuss long-range plans for the Population Biology and Physiological Ecology Program.

Agenda: Closed—To review and evaluate research proposals and projects as part of the selection process of awards. Open—January 29, 1982, 10:00 a.m. to 12:00 p.m. and from 1:30 p.m. Discussion to include long-range plans for the Population Biology and Physiological Ecology Program.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

December 23, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-37073 Filed 12-28-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Systematic Biology of the Advisory Committee for Environmental Biology.

Date and time: January 14 and 15, 1982—8:30 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of Meeting: Part Open—Open January 15, 1982, 10:30 a.m.–12:00 p.m. and from 1:30 p.m.; Closed—January 14, 1982, 8:30 a.m. to 5:00 p.m. and January 15, 1982, 8:30 a.m. to 10:30 a.m.

Contact person: Dr. Grady L. Webster, Program Director, Systematic Biology Program, (202) 357-9568, Room 336, National Science Foundation, Washington, D.C. 20550.

Summary minutes: May be obtained from contact person, Dr. Webster, at above stated address.

Purpose of meeting: To provide advice and recommendations concerning support for research in systematic biology. Open part of the meeting to discuss long-range plans for the Systematic Biology Program.

Agenda: Closed—To review and evaluate research proposals and projects as part of the selection process of awards. Open—January 15, 1982, 10:30 a.m. to 12:00 p.m. and from 1:30 p.m. Discussion to include long-range plans for the Systematic Biology Program.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

December 23, 1981.

[FR Doc. 81-37069 Filed 12-28-81; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

State of Texas; Staff Assessment of Proposed Amended Agreement

Note.—This document was originally published in the issue of December 8, 1981. It is reprinted at the request of the NRC.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed amended agreement with State of Texas.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission is publishing for public comment a proposed amendment to the existing section 274b. agreement between NRC and the State of Texas which became effective March 1, 1963. The request dated November, 6, 1981 from Governor Clements of the State of Texas, if approved, would permit Texas to regulate byproduct material as defined in section 11e(2) of the Atomic Energy Act, as amended, (uranium mill tailings) in conformance with the requirements of section 2740. of the Atomic Energy Act of 1954, as amended.

A staff asessment of the State's proposed radiation control program to implement the amended agreement is set forth below as supplementary information to this notice. A copy of the complete program description submitted by Texas including a narrative describing the State's proposed program for control over byproduct materials as defined in section 11e.(2) of the Act, appropriate State legislation, and Texas regulations is available for public inspection in the Commission's public document room at 1717 H Street, NW, Washington, DC.

DATE: Comments must be received on or before January 7, 1982.

ADDRESS: All interested persons desiring to submit comments and suggestions for the consideration of the Commission in connection with the proposed amended agreement should send them to the Nuclear Regulatory Commission, Office of State Programs, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Craig Z. Gordon, Office of State Programs, Nuclear Regulatory Commission, Washington, DC 20555, Phone: (301) 492-9886.

SUPPLEMENTARY INFORMATION: Assessment of Proposed Texas Program to Regulate Byproduct Material as Defined in section 11e.(2) of the Act, based on Criteria 29-36 of "Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreements," 44 FR 42818.

I. Introduction

The Uranium Mill Tailings Radiation Control Act of 1978 amended the requirements of section 274 of the Atomic Energy Act, "Cooperation With States" and imposed certain requirements that must be met by Agreement States in order to regulate uranium mill tailings after November 8, 1981. Governor William P. Clements, Jr. of the State of Texas has requested NRC to amend its agreement with NRC to permit continued State regulation of uranium mill tailings. His request was supported by a description of the State's program for control of uranium mills and mill tailings.

The State has 19 active licensees who process ore primarily for its source material content including two conventional uranium mills, 15 in-situ mining operations, and 2 smaller uranium recovery operations. Texas has also received four applications, one for a conventional mill and three for in-situ mining operations. No in-situ mining and recovery facility licensed by the State is authorized to establish a permanent tailings disposal area.

II. Assessment of Proposed State of Texas Radiation Control Program for Uranium Mills and Mill Tailings

1. Statutes

State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Pub. L. 95-604, Uranium Mill Tailings Radiation Control Act (UMTRCA).

In the enactment of any supporting legislation, the State should take into account the reservations of authority to the United States in UMTRCA as stated in 10 CFR 150.15a.

It is preferable that State statutes contain the provisions of section 6 of the Model Act,[1] but the provisions may be

[1] The reference is to the Model Uranium Mill Radiation Control Act, a copy of which has been placed in the Commission's Public Document Room. Section 6 of the Model Act requires that, among other things, statutory authority must be enacted to make clear State authority to carry out the requirements of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, as amended. UMTRCA specifies that when States license an activity involving mill tailings, that has a significant impact on the human environment, they must prepare a written independent analysis of the impact of such license on the environment, including any activities conducted pursuant thereto.

procedures by regulation or technical criteria. In any case, authority for their implementation should be adequately supported by statute, regulation or case law as determined by the State Attorney General.

In the licensing and regulation of ores processed primarily for their source material content and for the disposal of byproduct material, procedures shall be established which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:

a. An assessment of the radiological and nonradiological public health impacts;

b. An assessment of any impact on any body of water or groundwater;

c. Consideration of alternatives to the licensed activities; and

d. Consideration of long-term impacts of licensed activities.

The Texas Radiation Control Act, as amended by Senate Bills 480 and 735, includes the legislative provisions required by the UMTRCA of 1978 and provide satisfactory statutory authority for the State of Texas to implement the requirements of UMTRCA of 1978.

2. Regulations

State regulations should be reviewed for regulatory requirements, and where necessary, incorporate regulatory language which is equivalent, to the extent practicable, or more stringent than regulations and standards adopted and enforced by the Commission, as required by section 274o. (See 10 CFR Part 40, Appendix A and 10 CFR 150.31(b).)

On September 19, 1981, the Texas Board of Health adopted amendments to Parts 21, 41, and 43 of the *Texas Regulations for Control of Radiation* relating to the licensing and regulation of uranium mill tailings. Part 43 regulations address: bonding requirements, siting requirements, criteria for tailings management, dam stability analyses, inspection procedures, surety arrangements, requirements for site ownership, and criteria for decontamination, decommissioning, and reclamation of facilities following license expiration. The rules became effective on October 3, 1981. In the narrative section of the formal proposal, several statements describe how certain rules are to be implemented. It is the staff's opinion that these rules, in conjunction with the statements made in the narrative, are, to the maximum extent practicable, equivalent to the regulations promulgated and enforced by NRC.

3. Organizational Relationships Within the States

Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings.

a. Charts should be developed which show the management organization and lines of authority. This chart should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of uranium processing and disposal of tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between other agencies and/or regions and the Program Director should be clearly drawn.

Organizational charts outlining the Texas Department of Health, the Bureau of Radiation Control (BRC), and divisions within the Bureau of Radiation Control have been included in the proposal. The BRC is organized into three operational divisions: The Division of Licensing, Registration, and Standards (LRS), the Division of Compliance and Inspection (CI), and the Division of Environmental Programs (EP). Each division is subdivided into Branch Offices. Regional office staff are included in the Division of Compliance and Inspection.

All other functions of the uranium mill regulatory program will be conducted by the Bureau's office located in Austin, Texas.

b. Those States that will utilize personnel from other State Departments or Federal agencies in preparing the environmental assessment should designate a lead agency for supervising and coordinating preparation of this environmental assessment. It is normally expected that the radiation control agency in Agreement States will be the lead agency. The basic premise is that the lead agency is required to prepare the environmental assessment.

The Uranium Program within the Industrial Operations Branch, Division of LRS, is responsible for the evaluation of all applications for uranium recovery facility licenses received by the Bureau. Included are the preparation of the in-plant safety analysis reports and licensing documents.

The Standards Branch is responsible for developing and coordinating adoption of rules, regulatory guides, and license application guides related to uranium recovery facilities. This Branch also works with the Legal Division in coordinating all public notices and public hearings.

It is not anticipated that staff from other State agencies will be directly utilized in the preparation of environmental assessments nor in the licensing and inspection of uranium recovery facilities. However, three State agencies do work closely with the Bureau of Radiation Control by providing reference materials, and supplying review and comments on the applicant's environmental report, and the environmental assessment. These are the Texas Air Control Board (emission of non-radioactive pollutants into air), the Texas Department of Water Resources (emission of non-radioactive pollutants into water, aquifers, and wells used for in situ mining), and the Texas Railroad Commission (regulation of open pit mining and uranium exploration).

c. When a lead agency is designated, that agency should coordinate preparation of the statement. The other agencies involved should provide assistance with respect to their areas of jurisdiction and expertise. Factors relevant in obtaining assistance from other agencies include the applicable statutory authority, the time sequence in which the agencies become involved, the magnitude of their involvement, and relative expertise with respect to the project's environmental effects.

The Texas Department of Health is the agency which will prepare the environmental assessment. The Environmental Assessment Branch is responsible for the evaluation, analysis, coordination, and preparation of environmental assessments issued by the Bureau of Radiation Control. This Branch has persons with expertise in geology, hydrology, soil mechanics, meteorology, zoology, botany, computer science, chemistry, physics, radiation protection and dose assessment. This Environmental Assessment Branch's effort may be augmented with other Bureau personnel on a case-by-case basis, if needed.

In preparing the environmental assessment, the Division of Environmental Programs will conduct site visits, evaluate computer analyses, perform literature reviews, coordinate laboratory analysis of environmental samples, and perform field evaluations. A draft environmental assesment is prepared.

Similarly, the Division of Compliance and Inspection furnishes the Division of Licensing, Registration, and standards with recommendations concerning potential problem areas within the proposed facility. After the LRS considers all recommendations, an independent safety evaluation report is

prepared. Following completion of the draft environmental assessment and the draft in-plant analysis, both documents are reviewed internally by Bureau Staff and the Legal Division taking into account comments, information, and data received from other State agencies. Final documents are then prepared. A flowchart has also been included in the proposal which describes coordination with the Department for processing uranium mill license applications.

d. For those areas in the environmental assessment where the State cannot identify a State agency having sufficient expertise to adequately evaluate the proposal or prepare an assessment, the State should have provisions for obtaining outside consulting services.

Due to the establishment of adequate expertise and resources in the Bureau of Radiation Control, it is not anticipated the Bureau will need consultants. However, monies are available for consultants if they are needed for evaluating any particular site or project.

Medical consultants recognized for their expertise in emergency medical matters relating to the intake of uranium and its diagnosis thereof associated with uranium mining and milling, should be identified and available to the State for advice and direct assistance.

Physician members of the Radiation Advisory Board serve as medical consultants to provide advice and direct assistance in emergency medical matters relating to radiation exposure including uranium intake.

4. Personnel

Personnel needed in the processing of the license applications can be identified or grouped according to the following skills: Technical, Administrative, and Support.

In order to met the requirements of UMTRCA, current indications are that 2–2.75 total professional person-years' effort is necessary to process and evaluate a new conventional mill license, in-situ license, or major license renewal. A complete review of in-plant safety, production of the environmental assessment, and consultant use are primary considerations in the total professional effort for each licensing case. With respect to clerical support, one secretary is required to process two conventional milling applications, including the pre-licensing and post-licensing phases. Legal support is also an essential element of the mill program, and the effort is set at a minimum of 1/2 staff-year. In addition, consideration must be given to such post-licenisng activities as issuance of minor amendments, mill inspections, and environmental monitoring. Professional staff effort is estimated at 0.5–1.0 person-years for each year of post-licensing activities.

a. We estimate the total professional and technical staff-years effort within the Bureau of Radiation Control directly responsible for regulation of uranium mills and mill tailings to be equivalent to 27 full-time staff members. A breakdown of professional personnel in each of the three Divisions has been provided along with job descriptions and duties for each position (including vacancies). Resumes describing the education, training, and experience of individual staff members were also submitted.

Details of staffing levels in each of the Bureau's three divisions are as follows:

(1) Division of Licensing, Registration and Standards. The organization of the Division of Licensing, Registration, and Standards, and the personnel assigned to each section within the division have been identified. Seven of eight professional positions having full-time or part-time responsibilities for regulation of uranium mills have been filled. These include two in the Industrial Operations Branch, two in the Uranium Program, one authorized but vacant position in the low-level waste program, and three in the Standards Branch.

(2) Division of Compliance and Inspection. The Division of Compliance and Inspection is organized into three Inspection and Enforcement Branches: Radioactive Materials, X-Ray/non-ionizing radiation, and Emergency Response. The Uranium Inspection Program and the Regional Inspection Programs are the two programs within the Radioactive Materials Inspection and Enforcement Branch responsible for conducting inspections at uranium mills. Currently, there are nine professional full-time staff members assigned to perform uranium mill compliance functions. The three members from the Uranium Inspection Program are responsible for performing on-site inspections. Inspectors from the Regional Inspection Program who are assigned to the regions in which certain uranium recovery facilities are located assist the three members during inspections of tailings areas and the environment. Also included in the uranium mill compliance program are three staff members from the Emergency Response Branch, an Administrator, and a Division Director.

(3) Division of Environmental Programs. Two branches in the Division of Environmental Programs are directly responsible for environmental monitoring and sampling at uranium mills. The Facility Surveillance Branch is responsible for implementation of the environmental surveillance program around milling facilities. There are three qualified staff members in this Branch. The basic functions of the Environmental Assessment Branch is to coordinate and prepare the environmental assessment. Personnel in this Branch have expertise in the areas of geology, hydrology, soil mechanics, meterology, computer science, radiation health, and dose assessments. A breakdown by program and associated personnel directly involved in preparation of an environmental assessment are: the Ecological Evaluations Program (3 members), the Hydrological and Geotechnical Program (2 members), and the Engineering Program (3 members). Directly supporting the Bureau and coordinating with the Division of Environmental Programs is the Bureau of Laboratories which provides five full-time environmental chemists (radiochemists) to process environmental samples.

b. Legal, Clerical, and Secretarial Support. Three full-time attorneys and two legal secretaries in the Environmental Law Branch of the Texas Department of Health's Legal Division are assigned to the Bureau of Radiation Control. They are responsible for providing legal assistance and advice on laws and regulations, issuance of public notices, and conducting public hearings.

c. Administrative Support. Senate Bills 480 and 375 established an 18-member Radiation Advisory Board whose members are appointed by the Governor. The Board acts in an oversight capacity to the Bureau to review and evaluate State policy relating to radiation sources. It also provides technical advice on matters related to regulation of sources of radiation. Within the Bureau, each division is staffed by at least one full-time individual who is responsible for administrative functions. In addition, programs in the Office of Information, Education, and Administration also provide administrative support to the Radiation Control Bureau in the following areas: public information, coordination of training for Bureau staff, maintaining license registration files, and procurement of equipment and supplies. Assisting the Bureau in maintaining the budget and in collection of surety arrangements for uranium mills (required by regulation) is the Financial Analysis Program.

5. Functions to be Covered

The State should develop procedures for licensing, inspection, and

preparation of environmental assessments.

Evaluation of an application for a uranium milling license is performed against appropriate State statutory and regulatory authority, and licensing guides. A list of NRC and State regulatory guides utilized in evaluating license applications has been furnished. The in-plant safety analysis and review of the applicant's enviromental report are performed concurrently.

In regard to the in-plant safety review, the Compliance and Inspection Division conducts a preliminary evaluation of the applicant's proposed facility, equipment, administrative procedures, radiation safety program, environmental monitoring program, and emergency procedures. Findings are then forwarded to the Division of Licensing, Registration and Standards for consideration in the safety analysis report.

A procedural flow diagram for processing the environmental report including interdivision coordination has been furnished. If the findings of the preliminary review are adequate, copies of the report are forwarded to outside State agencies for review and comment. At the same time, the Division of Environmental Programs initiates preparation of the environmental assessment pursuant to the requirements of UMTRCA and State regulation utilizing appropriate licensing guides.

Inspections of all byproduct material licensees are conducted by Texas in accordance with general inspection procedures. These procedures, which are common to all routine inspections, have been supplemented by instructions specific to inspections at mills.

Compliance and Inspection Division policy is to perform unannounced inspections. The functions of all State inspectors are to prepare for inspections, conduct on-site inspections, prepare a written report of the inspection, prepare enforcement letters, and review corrective actions. For uranium mill compliance functions, inspectors assigned to the uranium inspection program, in cooperation with regional inspectors, are required to review and evaluate all aspects of mill operations and tailings control. During these inspections, personnel utilize standard inspection forms supplemented by NRC inspection guides. Copies of forms and guides have been furnished with the proposal. The frequency for conducting on-site uranium mill inspections is on an annual basis.

An environmental sampling program which includes obtaining samples of groundwater, surface water, vegetation, soil, air, and processing of thermoluminescent dosimeters (TLD) is also conducted by the uranium mill inspectors on a quarter basis. Results of inspection findings are submitted to the supervisory staff for appropriate technical consultation and review.

Section 274o.(3)(c) of the Atomic Energy Act requires the State to prepare a written analysis of the impact on the environment with respect to uranium mill tailings from proposed operations. Sections 4 and 11A. of the Texas Radiation Control Act, as amended, indicate that the Texas Radiation Control Agency will act as lead agency to independently prepare the environmental impact statement (EIS). Procedural requirements specific to preparing, coordination, organizing, and completing the EIS and issuance of specific licenses for uranium milling operations are contained either in the Act or recently adopted Part 43 of the Texas regulations.

As a supplement to the reporting requirements required by regulations or license conditions, the State should require the licensee to submit in writing on a semi-annual schedule reports specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and gaseous effluents from all pathways during the previous six months of operations. This data shall be reported in a manner that will permit the regulatory agency to confirm annual radiation doses to nearest individuals are within the requirements of 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations."

As previously noted, the Facility Surveillance Branch is responsible for designing and implementing a routine environmental surveillance program around each uranium recovery facility and conducting any special environmental surveillance project that may be needed. This Branch is also responsible for the operation of an environmental TLD monitoring system and verification of the licensee's environmental monitoring data. Dose assessments have been made at both conventional mills through utilization of computer models. The State's confirmation of radiation doses to nearest receptors from the conventional mills are determined to be within the limits of 40 CFR Part 190. Due to the absence of yellowcake dryer circuits, environmental doses may be considered to be negligible from in-situ uranium recovery operations.

6. Instrumentation

The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

The Bureau of Radiation Control has utilized a portion of funds authorized under its UMTRCA grant to purcahse field equipment for monitoring and surveillance purposes. The list submitted in the proposal shows radiation detection instruments and environmental sampling capability of equipment available at the Bureau's headquarters and regional offices. A separate list of instruments each inspector uses in the field to conduct radiation surveys for identification of alpha, beta and gamma emitting isotopes, and equipment for sampling environmental media in and around milling facilities has also been included. Essential equipment has been duplicated and ensures full-time availability of appropriate instrumentation and equipment for inspection purposes. Detection capabilities of equipment include identification and analysis of alpha, beta and gamma emitters in the uranium decay chain (including Pb–210, Rn–222, RA–226, Th–230, and U–238) in solids, liquids, and gases. Commonly analyzed sample media includes smear samples, soil, water, vegetation, milk, and filter media.

All radiation instrumentation is calibrated within the Bureau according to written procedures. Standard radiation sources traceable to the U.S. National Bureau of Standards are used for calibration. In addition to internal quality control/quality assurance procedures, the Bureau of Laboratories also participates in the U.N. Environmental Protection Agency's Inter-Laboratory Quality Assurance Program.

Supplementing the radiochemical analyses, the Bureau of Laboratories can also provide standard chemical analysis for trace elements, inorganics, organics, etc. As the primary laboratory for water analysis under contract from the Texas Department of Water Resources, the Bureau of Laboratories conducts analyses of all water samples for the State required under U.S. Environmental Protection Agency regulations.

7. Conclusion

Based upon the foregoing, the NRC staff concludes that the State of Texas has met the criteria for an amended agreement.

III. Amendment to Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Atomic Energy Commission[1] (herinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of January 10, 1963) with the State of Texas under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), which Agreement became effective on March 1, 1963, and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, it is necessary to enter into this amendment in order to implement new requirements of section 274 of the Act which become fully effective on November 8, 1981; and

Whereas, the Commission found on that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of section 274o. of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, this amendment is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of January 10, 1963, is amended by adding "as defined in section 11e.(1) of the Act;" after the words "byproduct materials" in paragraph A., by redesignating paragraphs B. and C. as paragraphs C. and D., and by inserting the following new paragraph immediately after paragraph A.:

"B. Byproduct materials as defined in section 11e.(2) of the Act;".

Section 2. Article II of the Agreement of January 10, 1963, is amended by inserting "A." before the words "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., and by adding the following at the end thereof:

"B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Act:

"1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

"2. The Commission reserves the authority to establish minimum standards governing reclamation, long term surveillance or maintenance, and ownership of such byproduct material. Such reserved authority includes:

"a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

"b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

"c. The authority to permit use of surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to subparagraph B.2.b. of this Article;

"d. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and

"e. The authority to enter into arrangements as may be appropriate to assure Federal long term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.".

Section 3. Article III of the Agreement of January 10, 1963, is amended by inserting "otherwise licensable by the State under Article I of this Agreement" after the words "special nuclear material."

Section 4. Article VII of the Agreement of January 10, 1963, is amended by inserting "all or part of" after the words "terminate or suspend," by inserting "(1)" after the words "finds that," and by adding at the end before the period the following:

", or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with the provisions of section 274 of the Act.".

Section 5. Article VIII of the Agreement of January 10, 1963, is amended by redesignating it Article IX and by inserting a new Article VIII as follows:

"In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of section 274o. of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation of long term surveillance or maintenance of such material,

"A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

"B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long term management of such byproduct material and its disposal site.".

This amendment shall become effective on .

Done at Austin, State of Texas, in triplicate, this day of 198 .

For the State of Texas.

William P. Clements, Jr.,

Governor.

Done at Washington, District of Columbia, in triplicate, this day of 198 .

For the United States Nuclear Regulatory Commission.

Nunzio J. Palladino,

Chairman.

Dated at Bethesda, Maryland, this 2nd day of December, 1981.

For the United States Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 81-35079 Filed 12-7-81; 8:45 am]

BILLING CODE 7590-01-M

[1] Under the provisions of the Energy Reorganization Act of 1974, the regulatory functions formerly carried out by the Atomic Energy Commission are not carried out by the Nuclear Regulatory Commission as of January 19, 1975.

Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on January 18, 1982, Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will review the technical assistance program in waste management research and will discuss the NRC Safety Research Program budget for FY 1983.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will

be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions of this meeting that may be closed to discuss the NRC Safety Research Program and Budget for 1983 as required (Sunshine Act Exemptions (2), (6), and (9)b). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance. The agenda for the subject meeting shall be as follows:

Monday, January 18, 1982—8:30 a.m. the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. John C. McKinley or the Staff Engineer, Mr. Herman Alderman (telephone 202/634–1414) between 8:15 A.M. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) Pub. L. 92–463 that it may be necessary to close sessions of the meeting as noted above to discuss matters which relate solely to the internal personnel rules and practices of the agency (Exemption (2)), to discuss information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy (Exemption (6)), and to discuss preliminary information the release of which would be likely to significantly frustrate the Committee in the performance of its statutory function (Exemption (9)b). The authorities for such closure are Exemptions (2), (6) and (9)b to the Sunshine Act, 5 U.S.C. 552b(c)(2)(6)(9)b.

Dated: December 23, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-37092 Filed 12-28-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittees on Electrical Systems and Emergency Core Cooling Systems; Meeting

The ACRS Joint Subcommittees on Electrical Systems and Emergency Core Cooling Systems will hold a meeting on January 23, 1982, at the Holiday Inn Convention Center, 1020 South Figueroa, Windsor Room Right, Los Angeles, CA. The Subcommittees will continue to review the NRC- and Industry-sponsored research on core water level indicator instruments and the NRC and Industry implementation of core water level indicator installation requirements.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Saturday, January 23, 1982—8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio or Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: December 23, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-37093 Filed 12-28-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co. and Iowa-Illinois Gas and Electric Co.; Issuance of Amendments to Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 75 and 68 to Facility Operating License Nos. DPR–29 and DPR–30, issued to Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company, which revised the Technical Specifications for operating of the Quad Cities Nuclear Power Station, Unit Nos. 1 and 2, located in Rock Island County, Illinois. The amendments are effective as of the date of issuance.

The amendments change the Technical Specifications relating to the containment cooling mode of the Residual Heat Removal system for each unit, to provide for shared service water cooling loops by means of an interconnection of the two loops.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration an

environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated December 3, 1981, as supplemented December 14, 1981, (2) Amendment No. 75 to License No. DPR-29 and Amendment No. 68 to License No. DPR-30, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Pubic Document Room, 1717 H Street, NW., Washington, D.C., and at the Moline Public Library, 504—17th Street, Moline, Illinois. 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 18th day of December 1981.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 81-37094 Filed 12-28-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co., et al. (Enrico Fermi Atomic Power Plant, Unit No. 2); Order Extending Construction Completion Date

Detroit Edison Company and the two co-owners, Wolverine Electric Cooperative, Inc. and Northern Michigan Electric Cooperative, Inc., are holders of Construction Permit CPPR-87 issued, September 26, 1972, for the construction of the Enrico Fermi Atomic Power Plant, Unit No. 2, presently under construction at a site in Monroe County, Michigan. By letter, dated June 12, 1981, LeBouef, Lamb, Leiby & MacRae, legal counsel for the Detroit Edison Company filed an application for extension of the latest construction completion date from January 1, 1982 to June 30, 1984. An extension is required (1) due to delays in construction caused by new requirements resulting from the Three Mile Island Unit 2 accident on engineering manpower, and (2) to allow for contingencies in completing construction and preoperational testing.

This action involves no significant hazards consideration; good cause has been shown for the dalays; and the requested extension is for a reasonable period, the bases for which are set forth in the staff's evaluation of the request for extension.

The Commission has determined that this action will not result in any significant environmental impact and, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement, or negative declaration and environmental impact appraisal, need not be prepared in connection with this action.

The NRC staff's evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Monroe County Library System, Reference Department, 3700 South Custer Road, Monroe, Michigan 48161.

It is hereby ordered that the latest completion date for CPPR-87 is extended from January 1, 1982 to June 30, 1984.

Date of Issuance: December 21, 1981.

For the Nuclear Regulatory Commission.

Darrell Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-37095 Filed 12-28-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-483]

Union Electric Co. (Callaway Plant, Unit No. 1); Order Extending the Construction Completion Date

Union Electric Company is the holder of Construction Permit No. CPPR-139 issued on April 16, 1976 for construction of the Callaway Plant, Unit No. 1 on a site in Callaway County, Missouri.

By letter, dated July 22, 1981, Union Electric Company filed a request for the extension of the latest construction completion date for the Callaway Plant from February 28, 1982 to December 31, 1983. The requested extension is required because of changes in Union Electric's construction program delaying scheduled completion for twelve months resulting from, according to Union Electric: (1) a change in the Missouri public utility law which prohibits the inclusion of construction work in progress in the rate base; and (2) projected load growth being less than originally anticipated. The aforementioned state law change, according to Union Electric, affected the amount of funds available for construction of the Callaway Plant. Additional reasons for the extension include successive strikes by the laborers' and operating engineers' unions which together lasted nine weeks, and design changes to the plant initiated to satisfy NRC requirements resulting from the accident at Three Mile Island. Included in the new requirements are two new buildings, a Technical Support Center and an Emergency Operations Facility, and associated data systems which are to be operational prior to fuel loading. The time required for design and construction of these two facilities will extend beyond the earlier fuel load date of April 1981. In addition, the productivity of construction labor has been lower than anticipated and is requiring more manhours than estimated at the initial planning stage due, in part, to increased quality control requirements.

This action involves no significant hazards consideration, good cause has been shown for the delays, and the requested extension is for a reasonable time, the bases for which are set forth in the staff's evaluation of the request for extension.

The Commission has determined that this action will not result in any significant environmental impact and, pursuant to 10 CFR Part 51.5(d)(4), an environmental impact statement, or negative declaration and environmental impact appraisal, need not be prepared in connection with this action.

The NRC staff evaluation and the order and the request for extension of the construction permit are available for public inspection at the Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C. 20555 and at the Fulton City Library, 709 Market Street, Fulton, Missouri and at the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

It is herey ordered that the latest construction competion date for CPPR-139 be extended from February 28, 1982 to December 31, 1983.

Date of Issuance: December 21, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-37096 Filed 12-28-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 60 to Facility Operating License No. DPR-36, issued to Maine Yankee Atomic Power Company, which revised Technical Specifications for operation of the Maine Yankee Atomic Power Station (the facility) located in Lincoln County, Maine. The

amendment is effective as of the date of issuance.

The amendment: (1) Revises the Technical Specifications in support of the Cycle 6 steam line break analyses; and (2) Revises the Technical Specifications by restructuring certain sections for clarification purposes.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated November 18, 1981, (2) Amendment No. 60 to License No. DPR-36 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Wiscasset Public Library Association, High Street, Wiscasset, Maine. 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 11th day of December, 1981.

For the Nuclear Regulatory Commission.

Eben L. Conner,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 81-37097 Filed 12-28-81; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Services Policy Advisory Committee; Meeting and Determination of Closing of Meeting

The meeting of the Services Policy Advisory Committee (the Advisory Committee) to be held Wednesday, January 13, 1982, from 2:00 p.m. to 5:00 p.m. at the Federal Deposit Insurance Corporation, Executive Dining Room, will involve a review and discussion of the current issues involving the trade policy of the United States. The review and discussion will deal with information submitted in confidence by the private sector members of the Committee under Section 135(g)(1)(A) of the Trade Act of 1974, as amended, (the Act), information submitted by government officials under Section 135(g)(2) of the Act the disclosure of which could be reasonably expected to prejudice United States negotiating objectives, information the disclosure of which would be likely to significantly frustrate implementation of proposed government action, and information properly classified pursuant to Executive Order 12065 and specifically required by such Order to be kept secret in the interests of national security (i.e., the conduct of foreign relations) of the United States. All members of the Advisory Committee have all necessary security clearances. Consistent with previous determinations concerning other advisory committees, established under Section 135(c) of the Act, I hereby determine that the meeting of the Advisory Committee will be concerned with matters listed above and with matters listed in Section 552b(c) of Title 5 of the United States Code. Therefore, the meeting of the Services Policy Advisory Committee will be closed to the public.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506.

William E. Brock,

United States Trade Representative.

[FR Doc 81-36981 Filed 12-28-81; 8:45 am]

BILLING CODE 3190-01-M

[Doc. No. 301-24]

Tanners' Council of America, Inc.; Extension of Time To Submit Briefs

On November 24, 1981, the United States Trade Representative decided to initiate an investigation pursuant to 19 U.S.C. 2412(a), into the allegations contained in a petition filed by the Tanners' Council of America, Inc. The text of that petition was published in the **Federal Register** on December 4, 1981 (46 FR 59353), and interested parties were invited to submit their views concerning the allegations in the petition.

Upon request, the time provided in 46 FR 59353 for filing of briefs is hereby extended as follows. Submissions should be filed in accordance with the procedures set forth in 15 CFR 2006.8 on or before January 18, 1982. In order to assure parties the opportunity to contest information provided by other interested parties, a rebuttal brief may be filed in accordance with the requirements of 15 CFR 2006.8 on or before February 1, 1982. For further information, contact Jane Bradley, Assistant General Counsel, Office of the United States Trade Representative: (202) 395-3432.

Jeanne S. Archibald,

Chairman, 301 Committee.

December 22, 1981.

[FR Doc. 81-36982 Filed 12-28-81; 8:45 am]

BILLING CODE 3191-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-660]

Canadian Pacific Ltd.; Application and Opportunity for Hearing

December 18, 1981.

Notice is hereby given that Canadian Pacific Limited ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934 as amended (the "1934 Act"), for exemption from the provisions of Rule 14a-4(a)(3), (b), (c), and (e) under the 1934 Act.

The Applicant states, in part:

Applicant is a Canadian corporation subject to the provisions of the Railway Act (Canada). It proposes to solicit proxies from its United States shareholders through a procedure whereby shareholders would be furnished a discretionary form of proxy and a non-binding preference sheet.

Applicant believes that the exemption would be appropriate in that it would provide a workable solution to a conflict between Canadian and United States laws.

For a more detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission at 1100 L Street, NW, Washington, D.C. 20549.

Notice is further given that any interested person not later than January 12, 1982, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or

requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-37078 Filed 12-28-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7851]

GNAC, Corp.; Application To Withdraw From Listing and Registration

December 21, 1981.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

1. The securities of GNAC, Corp. ("Company") 11¾% Mortgage Notes (Due 7/1/94), 14¾% Suboardinated Debentures (Due 6/15/95), are listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on August 13, 1981, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the securites on the Amex and the NYSE.

2. This application relates solely to withdrawal of the securities from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before January 13, 1982, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-37080 Filed 12-28-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6697]

Golden Nugget, Inc., Application To Withdraw From Listing and Registration

December 21, 1981.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The debentures of Golden Nuggett, Inc. ("Company"), 12¼% Secured Senior Sinking, Fund Debentures (due 3/1/94), are listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on May 8, 1981, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the debentures from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before January 13, 1982, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investor. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-37081 Filed 12-28-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18355; File No. SR-MSTC-81-7]

Midwest Securities Trust Co.; Self-Regulatory Organizations; Proposed Rule Change

Proposed rule change by Midwest Securities Trust Company, relating to new terminal fees for MST Communication System participants. Comments requested on or before January 19, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1981, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is *MST System Administrative Bulletin* dated December 7, 1981.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.*

The new terminal fees for MSTC Communication System participants are again necessitated by an increase imposed by AT&T. Due to this increase, MST Communication System

participants accounts will be charged the new rate beginning November, 1981. Subsequent monthly fees will remain the same unless another fee increase is declared by AT&T.

The new charge for the MST Communication System terminal fee is consistent with Section 17A of the Securities Exchange Act of 1934. The resulting cost from the AT&T increase must be offset by increased fees. The new fee will be allocated among all participants using the service.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.*

The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) *Self-Regulatory Organization's Statement on Comments Received from Members, Participants or Others on the Proposed Rule Change.*

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, 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 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on of before January 19, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 21, 1981.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-37076 Filed 12-28-81; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

December 22, 1981.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Dean Foods Company: Common Stock, $1 Par Value (File No. 7–6104)
Primark Corporation: Common Stock, No Par Value (File No. 7–6105)
Southwestern Energy Company: Common Stock, $2.50 Par Value (File No. 7–6106)
Tannetics Incorporated: Common Stock, $1 Par Value (File No. 7–6107)
Allied Telephone Company: Common Stock, $2 Par Value (File No. 7–6108)
KDI Corporation: Common Stock, $.35 Par Value (File No. 7–6109)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 14, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-37075 Filed 12-28-81; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

December 22, 1981.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Pantry Pride, Inc.: Common Stock, $.01 Par Value (File No. 7–6103)

This security is listed and registered on one or more other national securities exchanges. While this security is not included in the consolidated transaction and quotation reporting system, the Phlx has indicated in its application that last sale and quotation information for the security will be provided by the exchange to vendors of securities information and will be available on the Phlx floor.

Interested persons are invited to submit on or before January 14, 1982 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-37074 Filed 12-28-81; 8:45 am]

BILLING CODE 8010-01-M

[File No.: 22–11463]

United Bank Corp. of New York; Application and Opportunity for Hearing

December 21, 1981.

Notice is hereby given that United Bank Corporation of New York, a New York corporation ("UBNY"), has filed an application dated November 30, 1981 (the "Application") under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "1939 Act") for a finding by the Securities and

Exchange Commission (the "Commission") that the trusteeships of Morgan Guaranty Trust Company of New York, a New York trust company (the "Bank"), under three indentures that were qualified under the 1939 Act and another indenture that was not qualified under the 1939 Act, and with regard to each of which UBNY is the obligor, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under the indentures that have been qualified and the indenture that has not been qualified under the 1939 Act.

Under Section 310(b)(1) of the 1939 Act, a trustee shall not be deemed to have a conflicting interest by reason of acting as trustee under more than one indenture under which obligations of the same obligor are outstanding if such obligor sustains the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeships under such indentures are not so likely to involve a material conflict of interest as to make necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

UBNY alleges that:

1. The Bank, as Trustee, has entered into three indentures with UBNY, each of which has been qualified under the 1939 Act:

1(a) The Indenture dated as of June 15, 1977 (the "1977 Indenture") pursuant to which UBNY issued $30,000,000 aggregate principal amount of its 7¾% Notes Due June 15, 1987.

(b) The Indenture dated as of September 15, 1980 (the "1980 Indenture") pursuant to which UBNY issued $5,227,526 aggregate principal amount of its 10% Non-Assignable Debentures Due 1981–1986.

(c) The Indenture dated as of May 1, 1981 (the "1981 Indenture") pursuant to which UBNY may issue not more than $5,215,000 aggregate principal amount of its 10% Non-Assignable Debentures Due 1982–1987 (Island State Bank Series). The 1977 Indenture, the 1980 Indenture and the 1981 Indenture are hereafter referred to as the "Qualified Indentures".

2. The Bank, as Trustee, entered into an Indenture dated as of June 1, 1981 (the "Rondout Indenture") with UBNY. No securities have been issued under the Rondout Indenture as of the date of this Application. However, it is contemplated that not more than $2,093,000 aggregate principal amount of its 10% Non-Assignable Debentures Due 1982–1987 (The Rondout National Bank Series) will be issued in accordance with the terms of an Agreement and Plan of Merger, dated as of June 30, 1981 among UBNY, The Rondout National Bank and Henry Street National Bank providing for the merger of The Rondout National Bank into Henry Street National Bank. It is anticipated that merger will become effective no later than December 1, 1981. The Rondout Indenture has not been qualified under the 1939 Act by virtue of the exemption contained in Section 304(a)(9) of the 1939 Act and Rule 4a–2 promulgated thereunder.

3. Both the 1980 Indenture and the 1981 Indenture contain in Section 608(c) of each thereof the provision permitted by the proviso of Section 310(b)(1) of the 1939 Act in each case excluding from the operation of Section 310(b) the previous indenture or indentures, as the case may be. As the 1980 Indenture and the 1981 Indenture were both qualified under the 1939 Act, the trusteeship of the Bank thereunder and under the 1977 Indenture did not disqualify the Bank from acting as trustee under any of such indentures. The Rondout Indenture does not contain the provision permitted by the proviso to Section 310(b)(1) of the 1939 Act because it was not required to be, and therefore was not, qualified under the 1939 Act.

4. UBNY's obligations under each of the Qualified Indentures and the Rondout Indenture are wholly unsecured and rank *pari passu*. Except for variations as to amounts and interest rates, maturity dates, dates of payment of principal and interest, transferability and certain other provisions there are no material variations among the Qualified Indentures and between the Qualified Indentures and the Rondout Indenture. Such differences as do exist would in no way inhibit or discourage the Bank's actions with respect to any such Indenture or present the Bank with any possible conflict of interest.

5. UBNY is not in default under, and there exists no event which with notice or lapse of time or both would constitute a default under, any of the Qualified Indentures or the Rondout Indenture.

UBNY has waived (a) notice of hearing, (b) hearing on the issues raised by the Application and (c) all rights to specify procedures under Rule 8(b) of the Commission's rules of practice.

For a more detailed account of the matters of fact and law asserted, all persons are referred to the Application, which is a public document on file in the office of the Commission at the Public Reference Room, 1100 L Street, NW., Washington, D.C.

Notice is hereby further given that any interested person may, not later than January 18, 1982, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–37677 Filed 12–28–81; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Notice of Systems of Records and Revision of Systems of Records

AGENCY: Tennessee Valley Authority.

ACTION: Revision of routine uses for some of the agency's systems of records.

SUMMARY: On November 6 the Tennessee Valley Authority (TVA) at 46 FR 55175, published a notice of its intention to establish new or revised routine uses of systems of records. No comments were received. Accordingly, TVA adopts a new routine use for some of its systems of records to provide for necessary disclosures of information to officials of other agencies in connection with their statutory or regulatory oversight review responsibilities or authorized law enforcement activities. The routine use and the names of the systems of records to which it shall apply are described below.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cressler II, Division of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902, (615) 632–2170.

SUPPLEMENTARY INFORMATION: To provide for the necessary disclosures of information to agencies in connection with their statutory law enforcement regulatory oversight review responsibilities, TVA has established a new routine use. The new routine use permits disclosure, "To the appropriate agency, whether Federal, State, or local,

in connection with its oversight review responsbilities or authorized law enforcement activities." This would apply to agencies administering Federal or State programs, to agencies charged with the enforcement of civil or criminal statutes, or agencies, commissions, or other regulatory bodies authorized to coordinate law enforcement activities. Such activities include, but are not limited to, certain computer matching programs designed to identify or locate unauthorized recipients under Government entitlement and other programs or persons otherwise in violation of Federal or State law.

The routine use to be added to the existing routines uses reads as follows:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

Those systems of records to which the routine use apply are:

TVA–2 Personnel Files
TVA–3 Cooperative Training Program for Construction Craftsmen
TVA–5 Discrimination Complaint Files
TVA–6 Employee Accident Information System
TVA–7 Employee Accounts Receivable
TVA–8 Employee Alleged Misconduct Investigatory Files
TVA–9 Medical Record System
TVA–10 Employee Statements of Employment and Financial Interests
TVA–11 Payroll Records
TVA–12 Employee Travel Advance Records
TVA–13 Employment Applicant Files
TVA–14 Grievance Records
TVA–15 Land Between The Lakes Register of Hunter Applications
TVA–16 Land Between The Lakes Register of Law Violations
TVA–19 Consultant and Personal Services Contractor Records
TVA–21 OEDC Quality Assurance Personnel Records
TVA–23 Radiation Dosimetry Personnel Monitoring Records
TVA–24 Reforestation, Erosion Control, and Plantation Case History Record
TVA–25 Rehabilitation and Career Planning Records
TVA–26 Retirement System Records
TVA–27 Test Demonstration Farm Records
TVA–28 Wildland Owner Survey Records
TVA–29 Electricity Use, Rate, and Service Study Records

Dated: December 18, 1981.

W. F. Willis,

General Manager.

[FR Doc. 81-36947 Filed 12-28-81; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Performance Review Board

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of appointment of members of performance review board.

SUMMARY: Notice of the appointment of an individual to serve as a member of a Senior Executive Service Performance Review Board must be published in the Federal Register.

(5 U.S.C. 4314(c)[4])

DATE: October 30, 1981.

FOR FURTHER INFORMATION CONTACT: Gary E. Banas, 490 L'Enfant Plaza, SW., Washington, D.C. 20219; telephone No. (202) 447–1540.

SUPPLEMENTARY INFORMATION: The membership of the OCC PRB which appeared in the Federal Register, Volume 45, No, 27, page 8420, Thursday, February 7, 1980, has been changed. The current membership is as follows:

Paul M. Homan, Senior Deputy Comptroller for Bank Supervision
H. Joe Selby, Senior Deputy Comptroller for Operations
William A. Longbrake, Acting Senior Deputy Comptroller for Policy
John M. Miller, Acting Chief Counsel
Martha B. Stephens, Director for Human Resources (non-voting Executive Secretary and technical advisor to the PRB).

Charles E. Lord,

Acting Comptroller of the Currency.

[FR Doc. 81-36983 Filed 12-28-81; 8:45 am]

BILLING CODE 4810-33-M

Office of the Secretary

[Dept. Circular Public Debt Series No. 40–81]

Treasury Bonds of 2002

December 22, 1981.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $1,750,000,000 of United States securities, designated Treasury Bonds of 2002 (CUSIP No. 912810 CZ 9). 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 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 January 6, 1982, and will bear interest from that date, payable on a semiannual basis on August 15, 1982, and each subsequent 6 months on February 15 and August 15 until the principal becomes payable. They will mature February 15, 2002, 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 income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $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 coupon, registered, and book-entry securities, and the transfer of registered securities will 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. 20226, up to 1:30 p.m., Eastern Standard time, Wednesday, December 30, 1981. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, December 29, 1981.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000, 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., 7.11%. Commmon 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 an 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 only permitted to submit tenders for their own account.

3.4. 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. 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, a coupon rate will be established, on the basis of a ⅛ of 1 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 95.000. 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 basis 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.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified 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, January 6, 1982. 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, January 4, 1982. 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 alloted.

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 alloted, 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)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." 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. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The

interim certificates must be returned at the risk and expense of the holder.

5.5. 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, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

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.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the departmental procedures applicable to such regulations.

[FR Doc. 81-37060 Filed 12-28-81; 8:45 am]

BILLING CODE 4810-40-M

[Dept. Circular Public Debt Series No. 41-81]

Treasury Notes of January 15, 1989, Series C-1989

December 22, 1981.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $3,250,000,000 of United States securities, designated Treasury Notes of January 15, 1989, Series C-1989 (CUSIP No. 912827 MT 6). 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 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 January 13, 1982, and will bear interest from that date, payable on a semiannual basis on July 15, 1982, and each subsequent 6 months on January 15 and July 15 until the principal becomes payable. They will mature January 15, 1989, 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 income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $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 coupon, registered, and book-entry securities, and the transfer of registered securities will 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. 20226, up to 1:30 p.m., Eastern Standard time, Wednesday, January 6, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 5, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000, 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., 7.11%. 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 only permitted to submit tenders for their own account.

3.4. 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. 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, a coupon 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 98.250. 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 basis 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.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified 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, January 13, 1982. 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, January 11, 1982. 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 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 form 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)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." 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. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. 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, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

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.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

The anouncement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the departmental procedures applicable to such regulations.

[FR Doc. 81-37057 Filed 12-28-81; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Availability of Report of Medical Research; Program Evaluation

Notice is hereby given that the program evaluation of the Veterans Administration's Medical Research Program has been completed.

Single copies of the Medical Research Report are available free. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mrs. Lynn H. Covington, Acting Director, Program Evaluation, Veterans Administration (074), 810 Vermont Avenue, NW., Washington, D.C. 20420.

Dated: December 21, 1981.

Robert P. Nimmo,

Administrator.

[FR Doc. 81-37025 Filed 12-28-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 249
Tuesday, December 29, 1981

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 DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:00 a.m. on Wednesday, December 23, 1981, the Board of Directors of the Federal Deposit Insurance Corporation met by telephone conference call to consider certain matters which it determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), required its consideration on less than seven days' notice to the public.

The Board met in open session to consider the following matters:

Memorandum re: Budget of Liquidation Expenses for Budget Year 1982.

Memorandum and Resolution re: Accrual Accounting Requirements for Commercial and Mutual Savings Banks.

The Board then met in closed session to consider the following matters:

Reconsideration of an application of Golden West Bank, a proposed new bank, to be located at 1609 North State Street, Orem, Utah, for Federal deposit insurance.

Memorandum and Resolution regarding Reserves for Losses and Mutual Savings Banks Expenses—94 Open Liquidation Cases (Case No. 45, 051–L).

In considering the matters in closed session, the Board determined, by the same majority vote, that the public interest did not require consideration of the matters in a meeting open to public observation and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The Board further determined, by the same majority vote, that no earlier notice of the meeting was practicable.

Dated: December 23, 1981.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Assistant Executive Secretary.

[S-1936-81 Filed 12-24-81; 11:18 am]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM.

FEDERAL RESERVE SYSTEM: Board of Governors.

TIME AND DATE: 10:00 a.m., Monday, January 4, 1981.

PLACE: 20th Street and Constitution Avenue, NW, Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: December 23, 1981.

James McAfee,

Assistant Secretary of the Board

[S 1938-81 Filed 12-24-81; 11:20 am]

BILLING CODE 6210-01-M

3

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Monday, January 4, 1982.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
   a. Plug-in blade fuses (Docket No. 781).
   b. Proposal by Unfair Import Investigations Division to institute a section 603 investigation on airtight cast-iron stoves (Docket No. 784).
5. Investigation TA–406–7 (Unrefined Montan Wax from East Germany)—vote (on market disruption *and* remedy, if necessary).
6. Investigation 731–TA–52 (Preliminary) (Sheet Piling from Canada)—briefing and vote.
7. Any items left over from previous agenda.

Portions closed to the public:

5. Investigation TA–406–7 (Unrefined Montan Wax from East Germany)—briefing.

CONTACT PERSON FOR INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[S-1937-81 Filed 12-24-81; 11:19 am]

BILLING CODE 7020-02-M

4

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 8:30 a.m., Wednesday, December 30, 1981.

PLACE: 1776 G Street N.W., Washington, D.C., 7th Floor Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Requests for merger with special assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

[S-1934-81 Filed 12-23-81; 4:31 pm]

BILLING CODE 7535-01-M

5

POSTAL SERVICE. BOARD OF GOVERNORS.

Notice of Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 2:00 P.M. on Wednesday, January 6, in Honolulu, Hawaii, and at 9:00 A.M., January 7, 1982 in Conference Room 112/114.

Honolulu Main Post Office, 6300 Aolele Street, Honolulu, Hawaii. The Thursday meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

On December 21, 1981, by recorded vote taken during a telephone conference call, the Board of Governors of the United States Postal Service voted to close to public observation its meeting scheduled for January 6, 1982, which is expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, Hughes, Jenkins and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Secretary to the Board Cox; and Counsel to the Governors Califano.

The meeting to be closed will consist of a discussion among the members of compensation for certain postal executives.

Agenda

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Annual Report of the Postmaster General.

(The Board will consider the Annual Report of the Postmaster General to the Board concerning the operations of the Postal Service, as required by 39 U.S.C. § 2402. Upon approval thereof, or after making such changes as it considers appropriate, the Board is to transmit this report to the President and the Congress.)

4. Annual Report on Open Meetings Compliance.

(Mr. Cox, General Counsel, will present for approval of the Board the Annual Report to Congress that is required by the Government in the Sunshine Act regarding the Board's compliance with the Act.)

5. Report of the Audit Committee on FY 1981 Financial Statements.

(Mr. Babcock, as Chairman of the Audit Committee of the Board, will report to the members concerning the Service's Balance Sheet and Financial Statements for FY 1981.)

6. Review of the Annual Comprehensive Statement to the Congress.

(The Board will resume its consideration of the Comprehensive Statement, which was started at the meeting of December 2, 1981.)

7. Capital Investment Projects.

a. Vending Machines

(The Board will consider the purchase of stamp booklet dispensers, small currency changers, and small stamp venders.)

b. General Mail Facility, Salina, Kansas

(The Board will consider the construction of a new General Mail Facility at Salina, Kansas.)

c. Vehicles

(The Board will consider the purchase of 193 truck tractors.)

8. Report of the Regional Postmaster General.

(Mr. Coughlin, Regional Postmaster General, will report on postal conditions in the Western Region.)

9. Postal Service Employment Practices and the *Chisholm* case.

(The Board will discuss the implications of the recent decision of the U.S. Court of Appeals for the Fourth Circuit in *Chisholm* v. *United States Postal Service*.)

10. Election of Chairman and Vice-Chairman of the Board; Appointment of Chairmen of Board Committees.

(Under the Board's Bylaws, the first regular meeting of each calendar year is designated as the Annual Meeting. The terms of the Chairman and Vice-Chairman of the Board expire at the end of the first Annual Meeting following the meeting at which they were elected. Accordingly, the Board will consider the election of a Chairman and Vice-Chairman. The Bylaws also provide that the terms of the Chairmen of the several committees expire at the end of this meeting.)

Louis A. Cox,

Secretary.

[S–1935–81 Filed 12–24–81; 11:06 am]

BILLING CODE 7710–12–M

federal register

Tuesday
December 29, 1981

Part II

Department of Labor

Office of the Secretary

Equal Access to Justice Act; Adoption of Regulations

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 16

Equal Access to Justice Act; Adoption of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule; request for comment.

SUMMARY: The Department of Labor withdrew its previously published rules implementing the Equal Access to Justice Act on October 13, 1981, 46 FR 50376, in order to reconsider the coverage provisions. After such reconsideration, the Department of Labor hereby publishes its rules for implementing the Equal Access to Justice Act which became effective on October 1, 1981. This Act authorizes the establishment of uniform rules by each agency to provide for the payment of fees and expenses to eligible parties who prevail in an adversarial administrative proceeding against any agency of the Government.

DATES: These rules are effective on December 29, 1981. Comments must be received by March 1, 1982.

ADDRESS: Send comments to Seth D. Zinman, Associate Solicitor, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2464, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Sofia P. Petters, Counsel for Administrative Legal Services, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210; Telephone (202) 523–6807.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act (hereinafter the Act), Pub. L. 96–481, 94 Stat. 2327, (5 U.S.C. 504) which was effective October 1, 1981, amends section 504 of the Administrative Procedure Act, to provide for the payment of fees and expenses to eligible parties who prevail in an adversarial proceeding against an agency of the Government. The Act authorizes the establishment of uniform rules by each agency. The Department of Labor hereby publishes its rules for implementing the Act. These rules set forth the type of hearings which are covered by the Act, the eligibility standards for applicants, the procedures for applying for and making awards, and other relevant matters. These rules apply only to administrative adjudications and not to the payment of fees and expenses in judicial proceedings, which are covered by court rules.

The Act applies to covered proceedings pending before an administrative officer on October 1, 1981 through September 30, 1984, except for those cases which have been decided but final judgment has not been entered by reason of an abatement. An abatement may occur in a case in which a decision on the merits has been rendered but a party has been granted a period of time within which to comply before entry of the final order.

Section 16.104(a) of these rules sets forth the categories of administrative hearings covered by the Act. The Act applies to hearings under section 554 of the Administrative Procedure Act, that is: adjudications required by statute to be determined on the record after opportunity for an agency hearing. The legislative history clarifies that the Act limits such coverage to hearings which are adversarial and in which the position of the agency is represented. The hearings which the Department of Labor considers to be covered by the Act are those required by statute and in which the Department appears as an adversarial party. In general, the categories of hearings include such matters as proceedings for civil money penalties; hearings before the Occupational Safety and Health Review Commission, and the Mine Safety and Health Review Commission; suspension, revocation or modification of licenses and certifications; and certain debarment cases.

The Act excludes administrative proceedings for rulemaking, ratemaking, license applications and renewals, and hearings under statutes which presently provide for the payment of fees and expenses. The Department has determined that at least the following proceedings are not covered by the Act for the reasons stated. Hearings on state plans and variances for national defense, which are required by section 16(b) and 14(b), respectively, of the Occupational Safety and Health Act, are exempt as rulemaking. Wage determinations under the Service Contract Act and Davis-Bacon Act are exempt as ratemaking. The payment of fees and expenses are already provided for under the Longshoremen's and Harbor Workers' Act, 33 U.S.C. 901, and the Black Lung Benefits Act, 30 U.S.C. 901 and accordingly proceedings under these acts are exempt. Hearings for license applications and renewals are specifically exempted under the Equal Access to Justice Act. Thus, for example, hearings under the Farm Labor Contractor Act for the certification of a contractor or hearings under section 408(a) of ERISA for the granting of an exemption from the provisions of section 406(b) of ERISA are excluded as licensing.

The legislative history of the Equal Access to Justice Act indicates that the Act excludes from coverage those hearings which are not required by an underlying statute. Accordingly, these rules exclude from coverage those proceedings which are established by regulation but are not required by the governing statute. The Department conducts hearings under several programs implementing statutes which do not require hearings under section 554 of the Administrative Procedure Act. The statutes include the Rehabilitation Act of 1973, the Vietnam Era Veterans' Act, standards and conduct provisions of the Civil Service Reform Act, WIN, the Redwood National Park Expansion Act of 1978, the Service Contract Act and the Davis-Bacon Act.

Section 16.105 of the regulations sets forth eligibility standards for applicants for awards, based generally on net worth and/or number of employees. Thus, to be eligible for an award, the applicant must be (1) an individual with a net worth of not more than $1 million, (2) a business, association or organization with a net worth of not more than $5 million and not more than 500 employees, or (3) a tax exempt or non-profit organization with fewer than 500 employees. Units of state and local government are not eligible for awards.

It should be noted that under these rules, a specific type of proceeding may be covered, but a substantial number of parties to the proceeding would nonetheless be ineligible for awards because of their status (e.g., units of state or local government) or size.

Finally, the Department finds that cases before the Board of Contract Appeals are not covered by this Act because these proceedings are governed by the procurement rules and regulations under the Contract Disputes Act, 41 U.S.C. 601.

Section 16.202(b) of these regulations provides that the net worth exhibit of an applicant seeking an award shall be considered a part of the public record. This rule differs from the model rule suggested by the Administrative Conference which incorporates the Freedom of Information Act. Since, by this rule, the documents will be available to the public, the issue of disclosability under the Freedom of Information Act will not arise.

Publication as a Final Rule; Request for Comments

The Department has determined that these rules are procedural in character. Accordingly, pursuant to 5 U.S.C.

553(b)(3)(A), notice and public comment are unnecessary. However, interested members of the public are invited to submit comments on this regulation within 60 days to Sofia P. Petters at the above address. If necessary, the rule will be modified after receipt of the comments.

Effective Date

Because this rule is procedural in character, it shall become effective December 29, 1981 instead of thirty days thereafter. This determination is made pursuant to 5 U.S.C. 553(d).

Drafting Information

This document was prepared under the direction and control of T. Timothy Ryan, Jr., Solicitor of Labor, U.S. Department of Labor, Room S–2002, 200 Constitution Avenue, NW., Washington, D.C. 20210; Telephone (202) 523–7675.

Classification—Executive Order 12291

The rule is procedural in character. Therefore, this rule is not classified as a "major rule" under Executive Order 12291 (46 FR 13193, February 19, 1981), because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act, Pub. L. 96–354 91 Stat. 1164, because it is not a rule within the meaning of that Act. See: 5 U.S.C. 601(2).

Therefore, pursuant to section 203(c)(1) of the Equal Access to Justice Act, 5 U.S.C. 504(c)(1), Title 29 of the Code of Federal Regulations is amended by adding a new part, Part 16, to read as follows:

PART 16—EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.

16.101 Purpose of these rules.
16.102 Definitions.
16.103 When the Act applies.
16.104 Proceedings covered.
16.105 Eligibility of applicants.
16.106 Standards for awards.
16.107 Allowable fees and expenses.
16.108 Awards against other agencies.

Subpart B—Information Required From Applicants

Sec.

16.201 Contents of application.
16.202 Net worth exhibit.
16.203 Documentation of fees and expenses.
16.204 When an application may be filed.

Subpart C—Procedures for Considering Applications

16.301 Filing and service of documents.
16.302 Answer to application.
16.303 Settlement.
16.304 Further proceedings.
16.305 Decision.
16.306 Review by the Secretary.
16.307 Judicial review.
16.308 Payment of award.

Authority: Pub. L. 96–481, 94 Stat. 2327 (5 U.S.C. 504)

Subpart A—General Provisions

§ 16.101 Purpose of these rules.

Section 203(a)(1) of the Equal Access to Justice Act amends section 504 of the Administrative Procedure Act to provide for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings before the Department of Labor. An eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards, the proceedings that are covered, how to apply for awards, and the standards under which awards will be granted.

§ 16.102 Definitions.

As used in this part:

(a) "The Act" means section 504 of Title 5, United States Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. No. 96–481.

(b) "Adversary adjudication" means an adjudication under 5 U.S.C. 554 or other proceeding required by statute to be determined on the record after an opportunity for an agency hearing, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license.

(c) "Adjudicative officer" means the official who presides at the adversary adjudication, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise.

(d) "Department" refers to the cognizant departmental component which is participating in the adversary adjudication, (e.g., Occupational Safety and Health Administration, Mine Safety and Health Administration, and Employment Standards Administration).

(e) "Proceeding" means an adversary adjudication as defined in paragraph (b) of this section.

§ 16.103 When the Act applies.

The Act applies to any adversary adjudication pending before the Department at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs, except that it shall not apply in any case pending on October 1, 1981 in which a decision has been issued, but final agency action has not been taken by reason of an abatement.

§ 16.104 Proceedings covered.

(a) The Act applies in adversary adjudications in which the position of the Department or another agency of the United States is presented by an attorney or other representative who enters an appearance and participates in the proceeding in an adversarial capacity. Any proceeding which prescribes a lawful present or future rate or is primarily rule-making is not covered. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend or revoke licenses are covered if they are otherwise adversary adjudications. The following types of proceedings are deemed to be adversarial adjudications which will be covered by the Act, when all other conditions in the Act and in these rules are met:

(1) Hearings conducted by the Occupational Safety and Health Review Commission under the authority of 29 U.S.C. 661 of the Occupational Safety and Health Act; and hearings conducted by the Federal Mine Safety and Health Review Commission under the authority of 30 U.S.C. 823 of the Mine Safety and Health Act. In these proceedings, the rules of the respective Commissions rather than the instant rules will be applicable.

(2) Wage and Hour Division, Employment Standards Administration:

(i) Civil money penalties under the child labor provisions of the Fair Labor Standards Act at 29 U.S.C. 216(e) and 29 CFR Part 579.

(ii) Violations and debarment in federal contracts under the Walsh-Healey Act at 41 U.S.C. 39 and 41 CFR 50–203.1.

(iii) Revocation, modification and suspension of licenses under the Farm Labor Contractor Registration Act at 7 U.S.C. 2045(b) and 29 CFR 40.101.

(iv) Civil money penalties under the Farm Labor Contractor Registration Act at 7 U.S.C. 2048(b)(2) and 29 CFR 40.101.

(3) Office of Federal Contract Compliance Programs, Employment Standards Administration hearings prior to the denial, withholding, termination or suspension of a government contract or any portion of a contract under Title VII of the Civil Rights Act of 1964, as amended, at 42 U.S.C. 2000e–17 and 41 CFR Part 60–30.

(4) Office of Civil Rights:

(i) Fund termination under Title VI of the Civil Rights Act at 42 U.S.C. 2000d2 and 29 CFR Part 31.

(ii) Fund termination under the Age Discrimination in Federally Assisted Programs Act of 1975 at 42 U.S.C. 6104(a).

(iii) Fund termination or refusal to grant because of discrimination under 20 U.S.C. 1682.

(5) Employment and Training Administration:

(i) Proceedings under the Comprehensive Employment and Training Act at 29 U.S.C. 818, where the Department determines that a recipient of CETA funds is failing to comply with the requirements of the Act and the implementing regulations.

(ii) Conformity and compliance under the Federal Unemployment Tax Act at 26 U.S.C. 3303(b) and 3304(c).

(iii) Proceedings under section 303(b) of the Social Security Act of 1935, as amended, 42 U.S.C. 503(b).

(6) Mine Safety and Health Administration:

(i) Petitions for modification of a mandatory safety standard under the Mine Safety and Health Act at 30 U.S.C. 811(c) and 30 CFR 44.20.

(7) Occupational Safety and Health Administration:

(i) Exemptions, tolerances and variances under the Occupational Safety and Health Act at 29 U.S.C. 655 and 29 CFR 1905.3.

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to the covered issues.

§ 16.105 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party, as that term is defined in 5 U.S.C. 551(3), to an adversary adjudication for which it seeks an award; the applicant must prevail; and must meet all the conditions of eligibility set out in this subpart and Subpart B.

(b) To be eligible for an award, the applicant must be:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business which has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees;

(5) Any other partnership, corporation, association or public or private organization with a net worth of not more than $5 million and not more than 500 employees. A unit of state or local government is not a public organization within the meaning of this provision.

(c) For purposes of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares of another business, or controls, *in any manner*, the election of a majority of that business' board of directors, trustees or other persons exercising similar functions, shall be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 16.106 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Department as a party over which the applicant has prevailed was substantially justified or if special circumstances make the award sought unjust. No presumption arises that the Department's position was not substantially justified simply because the Department did not prevail.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding.

§ 16.107 Allowable fees and expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) Reasonable cost of any study, analysis, engineering report, test, or project necessary for the preparation of the party's case;

(3) Reasonable attorney or agent fees;

(b) Awards will be based on the prevailing market rates for the kind and quality of services furnished not to exceed the rates set forth in paragraph (c) of this section.

(c) No award under these rules for the fee of an attorney or agent may exceed $75.00 per hour. No award to compensate an expert witness may exceed $24.09 per hour.

(d) In determining the reasonableness of the fee sought, the adjudicative officer shall consider the following:

(1) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(2) The time actually spent in the representation of the applicant;

(3) The difficulty or complexity of the issues in the proceeding;

(4) Such other factors as may bear on the value of the services performed.

§ 16.108 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department of Labor and the other agency takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency by the adjudicative officer for the Department of Labor.

Subpart B—Information Required From Applicants

§ 16.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant at the time the proceeding was instituted and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth at the time the formal proceedings were instituted did not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) If the applicant is a partnership, corporation, association, or organization, or a sole owner of an unincorporated business, the application shall certify that it did not have more than 500 employees at the time the formal proceedings were initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

(d) The application shall state the amount of fees and expenses for which an award is sought.

(e) The application may also include any other matters that the applicant wishes the adjudicative officer to consider in determining whether and in what amount an award should be made.

(f) The application shall be signed by the applicant with respect to the eligibility of the applicant and by the attorney of the applicant with respect to fees and expenses sought. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 16.202 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 16.105(f) of this part) as of the date when the proceeding was initiated, i.e. the date the complaint was filed. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) The net worth exhibit shall be included in the public record of the proceeding in which an award is sought.

§ 16.203 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought.

(b) The document shall include an affidavit from each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided.

(1) The affidavit shall itemize in detail the services performed by the date, number of hours per date and the services performed during those hours. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide affidavits from two attorneys or agents with similar experience, who perform similar work, stating the hourly rate which they bill and are paid by the majority of their clients during a comparable time period.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 16.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the agency's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, matters related to the consideration of an award of fees and expenses shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule final disposition means the later of (1) the date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer or intermediate review board becomes administratively final; (2) issuance of an order disposing of any petitions for reconsideration of this agency's final order in the proceeding; (3) if no petition for reconsideration is filed, the last date on which such a petition could have been filed; or (4) issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration, or, in the case of an abatement, the end of the abatement period or the date on which an order is issued terminating the abatement period.

Subpart C—Procedures for Considering Applications

§ 16.301 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed with the adjudicative officer and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

§ 16.302 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30

day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 16.304.

§ 16.303 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the agency's standard settlement procedure. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 16.304 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 16.305 Decision.

The adjudicative officer shall issue a recommended decision on the application which shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decisions shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 16.306 Review by the Secretary.

The Secretary, for purposes of this subsection, means the Secretary of Labor or a person, board or other organizational unit authorized to perform the review function. Either the applicant or agency counsel may seek review of the recommended decision on the fee application, or the Secretary may decide to review the decision on his or her own initiative, in accordance with the Department of Labor's regular review procedures. If neither the applicant nor agency counsel seeks review and the Secretary does not take review on his or her own initiative, the adjudicative officer's decision on the application shall become a final decision of the Department 45 days after it is issued. If review is taken, the Secretary will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 16.307 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 16.308 Payment of award.

An applicant seeking payment of an award shall submit to the Comptroller for the Department of Labor a copy of the final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The request for payment shall be addressed to: Comptroller, U.S. Department of Labor, Frances S. Perkins Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 23rd day of December, 1981.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 81-37003 Filed 12-28-81; 8:45 am]

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federal register

Tuesday
December 29, 1981

Part III

Department of Agriculture

Science and Education Administration

Solicitation of Applications for Special and Alcohol Fuels Research Grants Programs, FY 1982

DEPARTMENT OF AGRICULTURE

Science and Education Administration

Special and Alcohol Fuels Research Grants Programs for Fiscal Year 1982, Solicitation of Applications

Special Research Grants Program

Notice is hereby given that under the authority of section 2(c)(1) of the Act of August 4, 1965, Pub. L. 89–106, as amended (7 U.S.C. 450i), the Cooperative State Research Service (CSRS), of the U.S. Department of Agriculture (USDA) will award project grants for certain areas of research. The total amount expected to be available for this program during the Fiscal Year 1982 is $10,255,810. The award of any grants under this program is subject to the availability of appropriations. This solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications. See Appendix I for application procedures. The research to be supported is in the following areas:

Soybean Research—$502,460
CSRS Contact: Dr. C. I. Harris; Telephone (202) 447–4587
Antidesertification—$1,005,890
CSRS Contact: Dr. C. I. Harris; Telephone (202) 447–4587
Animal Health Research—$6,941,320
CSRS Contact: Dr. Earl Splitter; Telephone (202) 447–5007
Aquaculture Research—$502,460
CSRS Contact: Dr. Clyde Richards; Telephone (202) 447–6628
Energy Research—$931,200
CSRS Contact: Dr. Paul Schleusener; Telephone (202) 447–5680
Food Quality and Safety Research—$372,480
CSRS Contact: Dr. Richard Garner; Telephone (202) 447–5547

Alcohol and Industrial Hydrocarbons Research Program

In addition, notice is hereby given that pursuant to the authority of Section 1419 of the Food and Agriculture Act of 1977, Pub. L. 95–113, as amended (7 U.S.C. 3154), CSRS, USDA, will award project grants for research in the area of alcohols and industrial hydrocarbons from agricultural commodities and forest products and agricultural chemicals and other products from coal derivatives. The total amount expected to be available for this program during Fiscal Year 1982 is $502,460. The award of any grants under this program is subject to the availablity of appropriations. This solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications. See Appendix I for application procedures. The research to be supported is in the following area:

Ethyl Alcohol Research—$502,460
CSRS Contact: Dr. Paul Schleusener; telephone (202) 447–5680

The Special Grants program energy funds and the Alcohol program funds are intended to stimulate and support energy-related research. Such research is national in scope, is not designated to meet the needs or address the problems of a particular State, area or locality, does not include demonstration or pilot research projects, and does not involve capital construction.

Proposals submitted in response to this notice will be evaluated in competition with proposals from other institutions. Grants will be awarded for research proposals selected by CSRS, utilizing recommendations of Peer Panels, from funds appropriated for Fiscal Year 1982 (October 1, 1981 through September 30, 1982). Projects may be up to 5 years' duration unless a shorter duration is specified. According to the requirements for Federal assistance program announcements under Pub. L. 95–220, The Federal Program Information Act, the following information is provided with respect to the areas of research described in this announcement for which project grants will be awarded:

(1) As outlined by OMB Circular No. A–89, the official program number and title for the Special Research grants are: 10.876, Grants for Agricultural Research, Special Research Grants.

(2) A program number and title will be established at a later date for research involving alcohols and industrial hydrocarbons.

(3) OMB Circular No. A–95, regarding State and local clearinghouse review of Federal and Federally assisted programs, does not apply.

Subject Matter Guidelines for Fiscal Year 1982, Grants Under Section 2(c)(1) of Public Law 89–106, as amended and Section 1419 of Pub. L. 95–113 as amended.

A. The applicable program should be indicated in Block 7 and the applicable program area and specific area of inquiry should be indicated in Block 8 of Form S&E–661 provided in the Grant Application Kit. Select one program and one program area only. The final determination of the program and program area will be made by the program staff and/or the appropriate panel. The number assigned to the specific area of inquiry must also be cited, if applicable (e.g., 2.1, 2.2), in Block 8 of Form S&E–661.

B. Information concerning the selection of proposals for funding is included in Appendix II. The appropriate format for preparation of the proposal is described in Appendix III. Appendix IV shows the scoring form which will be utilized by peer panel members and Appendix IV–A provides general information concerning proposal evaluation and grant administration. Detailed descriptions of the program areas to be supported follow.

Special Research Grants Program: Program Areas

1.0 Soybean Research. The total amount expected to be available for this area during Fiscal Year 1982 is $502,460. Grant awards will be limited to a maximum of $100,000 per grant for research in the following specific areas of inquiry:

1.1 Soybean production research to increase yields, enhance production efficiency, and conserve natural resources. Preference will be given to strategies with broad or national implication.

1.2 Research on soybean genetic mechanisms that contribute to yield or tolerance to biotic and abiotic stress.

2.0 Antidesertification Research. The total amount expected to be available in Fiscal Year 1982 is $1,005,890. These funds will be awarded to research proposals seeking solutions to the sustained declined and destruction of biological productivity of arid and semiarid lands caused by man-made stresses sometimes in conjunction with extreme natural events. The overall objective is to develop strategies to measure and verify desertification trends, and sustain or increase productivity of desertified areas. Projects will be funded in the following specific areas of inquiry:

2.1 Laboratory or field studies focusing on a single biological, physical, economic or behavioral process of interest in verifying trends, preventing, or reversing desertification. Grant awards will be limited to a maximum of $80,000 per grant.

2.2 Subsystem and system oriented, interdisciplinary research projects using generated or extant information and including combinations of at least two of the following disciplines: biological science, physical sciences, economic science and socio-political science. Grant awards will be limited to a maximum of $200,000 per grant.

3.0 Animal Health. The total amount expected to be available for this area during Fiscal Year 1982 is $6,941,320. These funds will be awarded to support research seeking solutions to animal health problems of livestock, poultry and major aquaculture species. Grant awards will be limited to a maximum of $150,000 per grant.

The overall objective of this research is to develop and/or refine abiotic and biotic methodologies for suppression of animal losses due to infectious and noninfectious diseases and internal and external parasites of livestock, poultry, and major aquaculture species. Research will be directed toward (1) clarification of infectious and noninfectious diseases and parasites or their interactive effects on animal health and (2) development of practical implementable management systems for the producer to prevent or alleviate these causes of animal losses.

Research may include clarification of complex or unknown etiologies, development or improvement of diagnostic methodology, clarification of disease pathogenesis and methods of transmission, studies of resistance mechanisms and resistence enhancing factors, and development of disease prevent, control or eradication technology.

The specific areas of inquiry in which projects will be funded are listed below. The specific areas of inquiry are broken down into subcategories which will be funded in the approximate amounts listed. In the event that there are insufficient meritorious proposals recommended by peer panels to utilize all funds in each specific area of inquiry or in each subcategory, the balance of any such funds will be awarded to meritorious proposals recommended by peer panels under the other subcategories within the specific area of inquiry or the other specific areas of inquiry. Utilizing the recommendations of the peer panels, the Administrator of CSRS will make the final determination on specific grants to be awarded. Only proposals dealing with the following specific areas of inquiry will be selected for funding:

3.1 Beef Cattle.

(1) Respiratory disease complex. (Approximately 17 percent of available funds)

(2) Reproductive diseases, especially brucelosis and including but not limited to anestrus, leptospirosis and vibriosis. (Approximately 13 percent of available funds)

(3) Enteric diseases. (Approximately 8 percent of available funds)

(4) Parasites (internal and external), including but not limited to anaplasmosis, ticks, flukes, nematodes and interactive effects of internal and external parasites, and metabolic diseases, especially bloat, grass tetany and mineral imbalance. (Approximately 4 percent of available funds)

3.2 Diary Cattle.

(1) Mastitis (Approximately 6 percent of available funds)

(2) Reproductive diseases, especially brucelosis and including non-detected anestrus. (Approximately 5 percent of available funds)

(3) Respiratory diseases. (Approximately 4 percent of available funds)

(4) Digestive and enteric diseases. (Approximately 3 percent of available funds)

3.3 Swine.

(1) Enteric diseases, especially in young animals. (Approximately 5 percent of available funds)

(2) Respiratory diseases, especially causative agents and including but not limited to atrophic rhinitis. (Approximately 4 percent of available funds)

(3) Reproductive diseases, especially pseudorabies, parvovirus, leptospirosis, brucellosis and anestrus in gilts and sows. (Approximately 4 Percent of available funds)

(4) Parasites (internal and external), especially trichinosis and including but not limited to mange mites and lice. (Approximately 3 percent of available funds)

(5) Lameness, especially in breeding animals. (Approximately 2 percent of available funds)

3.4 Poultry.

(1) Respiratory diseases. (Approximately 5 percent of available funds)

(2) Skeletal problems such as femoral head necroses, tenosynovitis and tibial dyschondroplasia. (Approximately 4 percent of available funds)

(3) Enteric disorders including coccidiosis, salmonellosis, clostridial infections and malabsorption syndrome. (Approximately 2 percent of available funds)

(4) Neoplastic diseases including Marek's disease, lymphoid leukosis and reticuloendotheliosis. (Approximately 1 percent of available funds)

3.5 Sheep and Goats. (Approximately 5 percent of available funds) Bluetongue, foot rot, chlamydial polyarthritis, gastrointestinal parasites, caseous lymphadenitis, pneumonia, mastitis, bacterial scours, and predator control.

Horses (Approximately 3 percent of available funds) Especially respiratory diseases, but including enteric diseases, reproductive diseases, and musculoskeletal diseases (especially laminitis and lameness).

3.7 Aquaculture (Approximately 2 percent of available funds) Infectious diseases and parasites.

4.0 Aquaculture Research. The total amount expected to be available for this area during Fiscal Year 1982 is $502,460. Grant awards will be limited to a maximum of $80,000 per grant. The objective of this research is to provide and improve upon the scientific and technical base needed by the aquaculture industry.

Increased production of freshwater species having high commercial potential such as catfish, trout, bait minnows, crawfish and freshwater shrimp will be included. Proposals focused on aquaculture production in the following specific areas of inquiry will be considered.

4.1 Improved production efficiency in diet formulation, reproduction and breeding, and disease and parasite control.

4.2 Improved water quality requirements for production and factors affecting the quality of water discharge.

5.0 Energy Research. The total amount expected to be available for this area during Fiscal Year 1982 is $931,200. The overall objective of this research is to obtain the scientific knowledge and technical information to substitute energy from agricultural and forestry sources for petroleum-based energy and to seek net energy self-sufficiency in agricultural and forestry production and other rural activities. Grant awards will be made in four specific areas of inquiry with maximum grant amounts as indicated below:

5.1 Biomass Storage. Grant awards will be limited to a maximum of $80,000 per grant of 2 or 3 years duration. This area will cover research on systems for the collection and storage and storage problems of biomass resources to enable year around energy output from promising species for energy use.

5.2 Methanol Production. Grant awards will be limited to a maximum of $80,000 per grant of 2 or 3 years duration. The objectives of this research area include design and development of methanol generators suitable for cooperative or multiple farm use. Use of crop and forestry biomass (including residues), livestock wastes, and by-products are included.

5.3 Combustion, Pyrolsis, and Gasification. Grant awards will be limited to a maximum of $80,000 per grant of 2 or 3 years duration. The objectives of this research are to evaluate equipment and systems for direct combustion and gasification of crop and forestry biomass and residues in addition to livestock wastes.

5.4 Vegetable Oil as Diesel Substitute. Grant awards will be limited to a maximum of $80,00 per grant of 2 or 3 years duration. The objectives of the research are the development of new storage techniques to optimize the net energy output. The chemical and

physical properties of the oil must be determined in relation to extraction methods, degumming requirements, and refining.

6.0 Food Quality and Safety Research. The total amount expected to be available for this area during Fiscal Year 1982 is $372,480. Grant awards will be limited to a maximum of $100,000 per grant for research in the following specific areas of inquiry.

6.1 The mode of actions of nitrites and how nitrosamines are formed chemically and how to detect them.

6.2 Interactions of nitrite, ph, salt content, other additivies, heat and muscle type on residues and flavor.

6.3 Development of suitable nitrite substitutes.

6.4 Identification of systems that inhibit nitrosamines in cured products.

Alcohol and Industrial Hydrocarbons Research Program

Program Areas

7.0 Ethyl Alcohol Research. The total amount expected to be available for this program during Fiscal Year 1982 is $502,460. Grant awards will be limited to a maximum of $80,00 per grant of 2 or 3 years duration for research in ethyl alcohol conversion. This program will cover research on the evaluation (including economic), treatment, and conversion of biomass resources for manufacture of ethyl alcohol.

At least 25 percent of these funds shall be made available for research relating to the production of alcohol, to identify and develop agricultural commodities (including alfalfa, sweet sorghum, black locust and cheese whey) which may be suitable for such production. At least 25 percent of these funds shall be made available for research relating to the development of technologies for increasing the energy efficiency and commercial feasibility of alcohol production, including processes of cellulose conversion and cell membrane technology.

It has been determined that, because of the need to implement these programs so that research relating to plant production can be initiated in the Spring of 1982, compliance with the Notice and public procedure provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Further, this action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. Although this Notice establishes the procedures and criteria under which the recipients of Special and Alcohol Fuels Research grants in fiscal year 1982 will be selected, and the terms and conditions under which such grants will be administered, it does not involve a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

Done at Washington, D.C., this 23rd day, of December.

Anson R. Bertrand,

Director of Science and Education.

Appendix I.—Application Procedures

1. Eligible Institutions.

Special Research Grants Program:

Grants under section 2(c)(1) of Pub. L. 89–106, as amended, may be made to land-grant colleges and universities, research foundations established by land-grant colleges and universities, State agricultural experiment stations, and to all colleges and universities having a demonstrable capacity in food and agricultural research.

Alcohol and Industrial Hydrocarbons Research Program:

Grants under section 1419 of Pub. L. 95–113, as amended, may be made to any college, university, Government corporation or Federal laboratory. Research Foundations are not eligible to receive research grants under Section 1419 of Pub. L. 95–113 unless they independently meet the definition of college and university as set out in section 1404 of Pub. L. 95–113, as amended.

2. Proposal Submission.

A. Before submission write or call the Grants Administrative Management Office (address and telephone number below) for a copy(ies) of the Grant Application Kit.

Proposals should be submitted to the Grants Administrative Management Office at the address shown below. Your submission should include an original and 19 copies of the proposal and Form S&E–661, Grant Application, which is included in the Grant Application Kit. The Form S&E–661 submitted with the original proposal should have original signatures of the principal investigator(s) and the authorized organizational representative. CSRS must have original signatures on file for each application. A principal investigator whose signature does not appear on the Grant Application will not be listed as a principal investigator in the event of an award.

Grants Administrative Management Office, Science and Education Management Staff, USDA, U.S. Department of Agriculture, Suite 103, Rosslyn Commonwealth Building, 1300 Wilson Boulevard, Arlington, Virginia 22209, Telephone: (703) 235–2638.

All copies of the proposal should be mailed in one package, if at all possible. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. If copies of the proposal *are* mailed in more than one package, the number of packages should be marked on the outside of each. It is important that *all packages be mailed at the same time.* The acknowledgement of receipt of the proposal will contain a proposal number and title. Later inquiries, addenda, etc., should include this information. However, every effort should be made to *assure* that the proposal contains all *pertinent information when initially submitted.* Prior to mailing, compare your proposal with the Application Requirements checklist contained in the Grant Application Kit and the format cited in Appendix III of this announcement.

B. To be considered for award, proposals must be prepared in the format prescribed in Appendix III and must be *received* in the Grants Administrative Management Office (GAMO) by the *close of business* on the date specified for each program area as listed below:

Soybean Research—deadline is March 5, 1982.

Antidesertification Research—deadline is March 5, 1982.

Animal Health Research—deadline is March 19, 1982.

Aquaculture Research—deadline is March 26, 1982.

Energy Research—deadline is April 9, 1982.

Food Quality and Safety Research—deadline is March 5, 1982.

Ethyl Alcohol Research—deadline is April 9, 1982.

Proposals should not exceed 10 pages (single spaced) excluding the literature citation, vitae appendices, and required forms from the Grant Application Kit.

When proposals exceed 10 pages in total, only the first 10 pages, excluding the pages referenced in the above paragraph, will be evaluated.

C. Research Involving Special Consideration. A number of situations frequently encountered in the conduct of research required special information and supporting documentation before funding can be approved for the project. If special information or supporting documentation is involved, the proposal should so indicate. Since some types of research targeted for CSRS support have a high probability of involving either recombinant deoxyribonucleic acid (DNA) or human subjects, special instructions follow:

Recombinant DNA. Principal investigators and endorsing performing organization officials must comply with the guidelines of the National Institutes of Health (See NIH "Guidelines for Research Involving Recombinant DNA Molecules" (43 FR 60108–60131) and subsequent revisions).

Human Subjects. Safeguarding the rights and welfare of human subjects used in research supported by CSRS grants is the responsibility of the performing organization. The informed consent of the human subject is a vital element in this process. Guidance is contained in Pub. L. 93–348, as implemented by Part 46, Subtitle A of Title 45 of the Code of Federal Regulations, as amended (45 CFR Part 46).

If the project involves human subjects at risk, the grantee must furnish CSRS with a statement that the research plan has been reviewed and approved by the appropriate Institutional Review Board at the grantee organization and that the grantee is in compliance with Department of Health and Human Services (DHHS)—policies, as amended, regarding the use of human

subjects. Form S&E–84, Protection of Human Subjects, may be used for this purpose.

3. Budget and Report Requirements.

The following items apply only to those proposals that are selected for funding:

A. The grant will be awarded on the basis of all financial support, from any source, that is shown in the proposal budget (Form S&E–55). While cost sharing is encouraged it will not be a factor in the selection process.

B. Annual financial reports (Standard Form 269) will be required.

C. An annual progress report not to exceed 2 pages will be required in addition to a shorter summary for insertion into a computerized research information service. Annual reports will be organized around the objectives and research timetable as specified in the project proposal.

D. Comprehensive (performance and financial) final reports must be submitted to CSRS within 90 calendar days after the termination date of the grant.

E. Grants awarded under the authority of Section 2(c)(1) of Pub. L. 90–106, as amended, and Section 1419 of Pub. L. 95–113, as amended, do not require matching or cost sharing, but cost sharing is encouraged.

Appendix II—Selection of Proposals for Funding

A. Selection Criteria. A panel of peer scientists for each specific area of inquiry will evaluate the proposals utilizing selection criteria listed in Appendicies IV and IV–A. The peer panel, when appropriate, can recommend a reduced level of funding for a proposal or that the research be confined to certain objectives for proposals under review. Utilizing the recommendations of peer panels, CSRS will select the proposals to be funded within the amount available for each program area.

B. When the peer panel recommends that the amount of award be reduced below the amount proposed for a proposal or where the panel recommends that only research dealing with selected objectives be funded, these changes will be discussed with the submitting institution. If the institution elects not to make these changes as a condition of the award, the proposal will be dropped from the list of proposals to be funded for a specific area of inquiry and another proposal selected from those recommended by the peer panel will be funded. After the grants are awarded, the CSRS program manager will retain one copy of unfunded proposals on file for 5 years. The remaining copies will be destroyed. A copy of the summary evaluation made by the peer panel will be provided for each unfunded proposal.

Appendix III—Format for Research Proposal

The Research Grant Application Kit (available from the Grants Administrative Management Office) includes forms, instructions, and other information to be used in applying for research grants which will be awarded in the areas described earlier.

Additional information and/or instructions relating to the format and content of the Research Proposal follow:

1. Grant Applicant (Form S&E–661). A Grant Application with all relevant original signatures must be included with the proposal. All other copies of the proposal should also contain a Grant Application, but facsimile or photocopied signatures will be accepted.

2. Title of Proposal. A brief, clear, specific designation of the subject of the research. The title (80 characters maximum) will be used for the USDA Current Research Information System (CRIS), for information to Congress, and for press releases. Therefore, it should not contain highly technical words. Phrases such as "Investigation of" or "Research on" should not be used.

3. Approval Signatures of Appropriate Officials. All proposals from a university, college, or institution must be signed by an authorized official.

4. Objectives. A clear, concise, complete, and logically arranged statement of the specific aims of the research.

5. Procedures. A statement of the essential working plans and methods to be used in attaining each of the stated objectives. Procedures should correspond to the objectives and follow the same order. Procedures should include items such as: The sampling plan, experimental design, and analyses anticipated.

6. Justification. This should describe (1) the importance of the problem to the needs of the Department of Agriculture and to the States or region, being sure to include estimates of the magnitude of the problem; (2) the importance of starting the work now; and (3) reasons for the work being performed in your particular institution.

7. Literature Review. A summary of pertinent publications with emphasis on their relationship to the research. Cite important and recent publications from other institutions, as well as your own institution. Citations should be accurate and complete including the title of the article. Literature citations should be appended to the proposal and are not included in the 10-page limit.

8. Current Research. Describe the relevancy of the proposed research to ongoing and as yet unpublished research at your own and at other institutions. Show other grants or support in this and related areas.

9. Facilities and Equipment. The location of the work and the needed and available facilities and equipment should be clearly indicated. This section may be combined with Section 4, Procedures, but the combination must clearly show needed and available facilities and equipment.

10. Research Timetable. Show all important research phases as a function of time, year by year.

11. Personnel support. Identify clearly all personnel who will be involved in the research. For each scientist involved, include (1) an estimate of the time commitments necessary and (2) vitae of the principal investigator, senior associates, and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of all key persons who will work on the project, whether or not Federal funds are sought for their support. The vitae also can be provided as an appendix and will not be included in the 10-page limit. The vitae are to be no more than 2 pages each in length excluding publication listings. Provide for each person a chronological list of the most recent representative publications during the preceding 5 years, including those in press. List the authors in the same order as they appear on the paper, the full title, and the complete reference as they usually appear in journals.

12. Additions to Project Description (if any). Each project description is expected by the members of review committees and the program staffs to be complete in itself. Distribution of additional materials, other than for the records, will be limited to the principal reviewers. In those instances in which the submission of additional material is necessary (e.g., photographs which do not reproduce well, and reprints or other especially pertinent material which are not suitable for inclusion in the proposal), 8 copies or sets, identified by title of the research project and name of the principal investigator(s), should accompany the proposal.

Appendix IV—Peer Panel Scoring Form

Proposal Identification No.————————
Institution and Project Title————————

I. Basic Requirement:

Proposal falls within guidelines? ——— yes ——— no. If no, explain why proposal does not meet guidelines under comment section of this form.

II. Selection Criteria:

	Score 1–10	Weight factor	Score X weight factor	Comments
1. Scientific and technical quality of the idea		8		
2. Scientific and technological quality of the approach		8		
3. Relevance and importance of proposed research to solution of specific areas of inquiry		6		
4. Feasibility of attaining objectives during life of proposed research		5		
5. Adequacy of professional training or research experience of research team in essential disciplines needed to conduct the proposed research		5		
6. Adequacy of facilities, equipment, and professional and technical staffing		5		

Score———————— ———
Summary Comments:————————

Appendix IV–A—Evaluation of Proposals

The peer panel, subject to final determination by the Administrator of CSRS, will determine whether a proposal falls within the guidelines. If the proposal does not meet the guidelines the proposal will be eliminated from competition and returned to

the institution submitting the proposal. Proposals not meeting the guidelines will not be scored on selection criteria by the peer panel.

Proposals satisfactorily meeting the guidelines will be evaluated and scored by the peer panel for each criterion utilizing a scale of 1 to 10. A score of one is low for the selection criterion. A score of 10 is high for the selection criterion. A weighting factor is used for each criterion.

Grant Administration and Allowable Costs

The grants awarded will be administered in accordance with the USDA Uniform Federal Assistance Regulations (46 FR 55636, November 10, 1981), applicable OMB Circulars and Form S&E–638, General Provisions for Grants and Cooperative Agreements. A copy of Form S&E–638 is included in the Grant Application Kit.

The determination of allowable costs shall be made in accordance with the following applicable Federal Cost Principles in effect on the effective date of the Agreement:

Educational Institutions—OMB Circular A–21.

Nonprofit Organizations—OMB Circular A–122.

Commercial Firms—FPR 1–15.2.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

REMINDERS

List of Public Laws

Last Listing December 24, 1981

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.R. 3455 / Pub. L. 97–99 Military Construction Authorization Act, 1982. (Dec. 23, 1981; 95 Stat. 1359) Price: $2.50.

H.R. 4035 / Pub. L. 97–100 Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1982, and for other purposes. (Dec. 23, 1981; 95 Stat. 1391) Price: $2.25.

H.R. 4034 / Pub. L. 97–101 Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1982. (Dec. 23, 1981; 95 Stat. 1417) Price: $2.25.

H.R. 4209 / Pub. L. 97–102 Department of Transportation and Related Agencies Appropriation Act, 1982. (Dec. 23, 1981; 95 Stat. 1442) Price: $2.25.

H.R. 4119 / Pub. L. 97–103 Making appropriations for Agriculture, Rural Development and Related Agencies programs for the fiscal year ending September 30, 1982, and for other purposes. (Dec. 23, 1981; 95 Stat. 1467) Price: $2.25.

H.R. 3484 / Pub. L. 97–104 George Washington Commemorative Coin Act. (Dec. 23, 1981; 95 Stat. 1491) Price: $1.50.

H.R. 4910 / Pub. L. 97–105 To amend the District of Columbia Self-Government and Governmental Reorganization Act and the charter of the District of Columbia with respect to the provisions allowing the District of Columbia to issue general obligation bonds and notes and revenue bonds, notes, and other obligations. (Dec. 23, 1981; 95 Stat. 1493) Price: $1.75.

H.R. 4241 / Pub. L. 97–106 Military Construction Appropriation Act, 1982. (Dec. 23, 1981; 95 Stat. 1503) Price: $1.75.

H.R. 5273 / Pub. L. 97–107 To allow the George Washington University Higher Education Facilities Revenue Bond Act of 1981 of the District of Columbia to take effect immediately. (Dec. 23, 1981; 95 Stat. 1509) Price: $1.50.

H.R. 1465 / Pub. L. 97–108 "State and Local Government Cost Estimate Act of 1981". (Dec. 23, 1981; 95 Stat. 1510) Price: $1.50.

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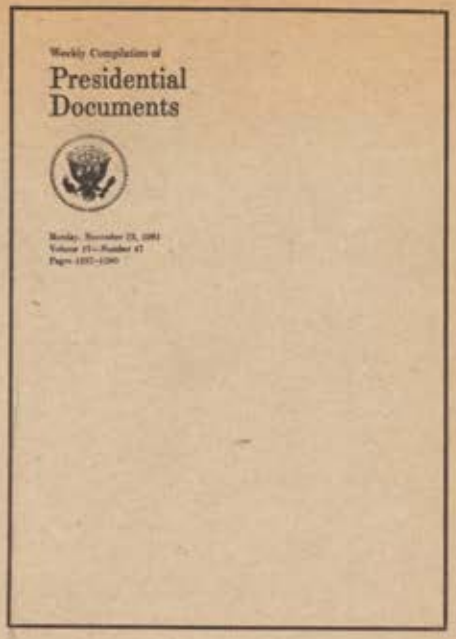

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