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Tuesday
November 6, 1984

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Federal Maritime Commission

Air Pollution Control
Environmental Protection Agency

Aircraft
Federal Aviation Administration

Animal Diseases
Animal and Plant Health Inspection Service

Animal Drugs
Food and Drug Administration

Communications Common Carriers
Federal Communications Commission

Employee Benefit Plans
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Excise Taxes
Internal Revenue Service

Freedom of Information
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Hazardous Waste
Environmental Protection Agency

Income Taxes
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Agricultural Marketing Service

Natural Gas
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Privacy
Architectural and Transportation Barriers Compliance Board

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 84-092]

Bovine Tuberculosis Indemnity; Affirmation of Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of Interim Rule.

SUMMARY: This document affirms the interim rule which amended the tuberculosis indemnity regulations in 9 CFR Part 50 to make the provisions that apply to cattle also apply to certain bison. This rule is necessary to help eradicate an outbreak of bovine tuberculosis in bison.

EFFECTIVE DATE: November 6, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell Essey, Cattle Diseases Staff, VS, APHIS, USDA, Room 819, Federal Building, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1984, a document was published in the **Federal Register** (49 FR 28040-28041), which amended the regulations in 9 CFR Part 50 (referred to below as the regulations). Prior to the effective date of the interim rule, the regulations contained provisions for the payment of indemnities to owners of cattle (and under very limited circumstances to owners of swine) destroyed because of bovine tuberculosis. Under these regulations indemnity is paid to an owner of such animals destroyed because of bovine tuberculosis to encourage the owner to cooperate in the timely removal of infected animals from the herd or, in the case of herd depopulation, to remove foci of infection in an otherwise clean area and thereby prevent transmission of the disease to nearby susceptible herds. The interim rule amended the regulations to provide that the provisions of Part 50 applying to cattle shall also apply to bison in herds in South Dakota found in June 1984 to be foci of bovine tuberculosis infection and to any other bison affected with or exposed to bovine tuberculosis because of such South Dakota foci of bovine tuberculosis infection.

The interim rule was made effective on July 6, 1984. Comments were solicited for 60 days following publication. Two comments were received.

One commenter expressed support for the interim rule without suggesting any changes. The other commenter asserted that the rule should be expanded to apply to bison herds anywhere in the United States. No changes are made based on this comment. At this time it is not necessary to consider expanding the rule to apply to any other bison in the United States since it appears that the rule applies to all bison in the United States that present a significant risk of spreading bovine tuberculosis.

Further, the factual situation which was set forth in the interim rule still provides a basis for the amendments.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have 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.

It is anticipated that the rule will affect less than one percent of the bison in the United States.

Based on the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 50

Animal diseases, Cattle, Hogs, Indemnity payments, Tuberculosis.

PART 50—BOVINE TUBERCULOSIS INDEMNITY

Accordingly, the interim rule amending 9 CFR Part 50 published in the **Federal Register** on July 10, 1984, at 49 FR 28040-28041 is adopted as a final rule.

Authority: Secs. 3, 4, 5, 11 and 13, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 3, 76 Stat. 130; 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 29th day of October, 1984.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-29168 Filed 11-5-84; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3, 375, 381, 385, and 389

[Docket Nos. RM82-35-001 through -003, Order No. 395]

Fees Applicable to General Activities

Issued: October 31, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing and making technical correction.

SUMMARY: On August 31, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule in Docket No. RM82-35-000, Order No. 395, 49 FR 35348 (Sept. 7, 1984), establishing fees for general activities. The Commission received three timely petitions for rehearing of the final rule in this docket. For the reasons detailed in its order, the Commission is denying rehearing of the final rule. This order also makes a technical correction to the final rule to clarify that reduced fees must accompany a petition for review in

an adjustment denial appeal and the answer in a remedial order appeal.

EFFECTIVE DATE: This order will become effective October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Roland M. Frye, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8316.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

I. Introduction

On August 31, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule establishing fees for general activities.[1] The Commission received petitions for rehearing of the final rule from Interstate Natural Gas Association of America (INGAA), Phillips Petroleum Company and Phillips Oil Company jointly (Phillips) and Transcontinental Gas Pipe Line Corporation (Transco). For the reasons stated below and those set forth in the final rule, this order denies these petitions.

INGAA and Transco request rehearing on three issues: (1) whether the Commission has demonstrated the relationship between the particular costs for which the Commission seeks reimbursement and the conferring of any special benefit conferred on the regulated company; (2) whether the Commission's reservation of the "direct billing" option is subjective, vague, arbitrary and capricious; and (3) whether the Commission has provided sufficient data to support the costs to be recovered through fees and thereby permitted the public a meaningful opportunity to comment on this rulemaking. INGAA contends as part of its first argument that the final rule failed to explain how it determined the fee scales for the remedial order appeals, how and when all fee reductions would take place, and why States and municipalities were exempted from all fees. INGAA also contends as part of its second argument that the fee rulemaking set forth no meaningful standards for allocating portions of direct billing to intervenors.

Phillips raises issue (1) above, and also contends that (1) the rulemaking should have provided that producers and resellers may recover the fee expenses as an adjustment to natural gas sales prices, the absence of such recovery constituting an unlawful reduction of the maximum lawful Natural Gas Policy Act (NGPA) prices and unlawful discrimination in favor of pipelines (who can include their Commission fees in their resale rates); and (2) the Commission should waive fees not only when a company is in dire financial straits but where the amount of the fee is so significant that it chills the filing or prosecution of the application or the effectuation of the contemplated transaction.

II. Disposition of Petitions for Rehearing

A. Benefits

In the final rule in this docket, the Commission established fees for the services and benefits it provides under the Natural Gas Policy Act. The fees were promulgated under the authority of the Independent Offices Appropriation Act (IOAA).[2] The IOAA states, in pertinent part, that:

> It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.

INGAA, Transco and Phillips all argue that the Commission has failed to show that the fees set forth in this rulemaking are commensurate with the benefits received by the affected companies. This argument is virtually identical both to the issue raised by INGAA and Transco in their requests for hearing of the Commission's rulemaking on fees applicable to natural gas pipeline matters,[3] and to the issue raised by Phillips (and also Pennzoil Co.) in its request for rehearing of the Commission's rulemaking on fees applicable to producer matters under the Natural Gas Act.[4] In those two rehearings, the Commission thoroughly examined the "special benefits" issue and affirmed the correctness of the initial conclusion in the two rulemakings that the Commission did provide such benefits to the companies to whom the fees are charged. We consider the reasoning and conclusions of those orders denying rehearing applicable to the arguments raised in this docket and therefore again reject petitioners' general argument.

We also find no merit regarding INGAA's three specific contentions. The method of determining the fee schedule for remedial order appeals was fully set forth in Section III–E of the final rule. The reduced fees for all services covered in the final rule are implemented simply by substituting them for the full fees set forth earlier in the rulemaking.[5] The reduced fees went into effect on October 9, 1984, as explained in Section VI of the rule. Finally, states and municipalities have been exempted from fees for the reasons spelled out in Section III–F–3 of the final rule, *i.e.*, that such entities' involvement in Commission proceedings generally serves the public interest, and that separation of such "public interest" cases from proceedings in which these governmental entities could be subject to fees would impose an undue administrative burden on the Commission.

B. Direct Billing

In the final rule in this docket, the Commission recognized that a few proceedings may be so extensive in scope and present such complex issues as to require an extraordinary amount of time and effort. In such cases, the fees established in the final rule would bear no reasonable relationship to the Commission's actual cost of the proceeding. The rule therefore reserved the option of "ordering a direct billing when the processing of the filing begins, or any time up to one year after receiving a complete filing." [6] INGAA and Transco challenge this option as vague, subjective, arbitrary and capricious, and INGAA also criticizes the rule for failing to set forth meaningful standards for allocating portions of the direct billing to intervenors. The Commission has decided that it is better to implement the direct billing procedure on a case-by-case basis initially rather than attempt to develop detailed generic standards without practical experience. Once we gain practical experience, we will be in a much better position to develop sound and workable generic standards. In the meantime, petitioners will have every opportunity to question or challenge any Commission direct billing whenever the issue arises.[7] We therefore reject petitioners' argument concerning direct billing.

C. Sufficiency of Data

INGAA and Transco claim that the data placed in the Commission's public files is insufficient to verify the cost basis for each fee set forth in the final

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[1] 49 FR 35348 (September 7, 1984).

[2] 31 U.S.C. 9701 (1982).

[3] 49 FR 17,437 (April 24, 1984), *appeals docketed sub nom.* Transcontinental Gas Pipe Line Corp., et al. v. FERC, Nos. 84–2267, *et al.* (10th Cir. June 19, 1984). *See also* Order Denying Rehearing in Docket Nos. RM82–30–001 through –003, issued today.

[4] 49 FR 17435 (April 24, 1984), *appeal docketed sub nom.* Phillips Petroleum Co. v. FERC, No. 84–1846 (10th Cir. June 18, 1984). *See also* Order Denying Rehearing in Docket Nos. RM82–30–001 through –003, issued today.

[5] The reduced fees must accompany the petition for review in an adjustment denial appeal and the answer in a remedial order appeal. Sections 381.303(a) and 381.304(a) are amended to clarify this point.

[6] 49 FR at 35353–35354.

[7] 49 FR 35357 at 35362–35363.

rule. We disagree. The rule itself described in considerable detail the cost basis of these fees, and additional data was placed in the public file for this docket.[8] The Commission has thereby fulfilled its public disclosure obligations under the law.[9]

D. Passthrough

Phillips asks the Commission to permit producers and resellers to pass through to their customers the cost of the fees, as the pipelines are allowed to do.[10] The NGPA does not generally authorize the Commission to increase prices above the levels set forth in the Act. The Commission can increase rates under sections 104, 106, and 109, but only if such increase is just and reasonable under the Natural Gas Act. Phillips does not claim that such increased rates would be just and reasonable, nor has it alleged that confiscation would occur without the recoupment of fees paid (*FERC* v. *Pennzoil Producing Co.*, 439 U.S. 508 (1979)). Certainly, even if the Commission were to allow passthrough under these sections, it would still not address the problem for natural gas priced under the other NGPA sections.

With respect to the discrimination claim by Phillips, neither the NGPA, as noted, nor the Natural Gas Act prohibits the passthrough of fees paid by producers, resellers and pipelines. But it is within the Commission's discretion to treat first sellers and pipelines differently because of the fundamental differences in these laws as they apply to these two regulated entities; first sellers are subject to fixed ceiling prices under the NGPA while pipelines are not.

We also reject Phillips' argument that section 110 could be used to allow producers to pass through the fees. Such fees do not fall within the types of production-related costs contemplated by NGPA section 110 (see section 110(a)(2)). Moreover, if the producers and resellers qualify for a waiver of, or an NGPA section 502(c) adjustment from, the fees, then they can achieve through those means the same result as Phillips now seeks. Finally, we note that the IOAA provides that the recipient of a benefit—not its customers—may be charged for the agency's costs in providing that benefit.

[8] 49 FR 35357 at 35359–35361.

[9] We note that a similar claim by INGAA and Transco was rejected in the order denying rehearing of the rulemaking concerning fees applicable to natural gas pipeline matters. 49 FR 17437 at 17438. *See also* Order Denying Rehearing in Docket Nos. RM82–30–001 through –003, issued today.

[10] This argument was also rejected in the Order Denying Rehearing in Docket Nos. RM82–30–001 through –003, issued today.

E. Waiver

Finally, Phillips argues that the Commission should waive fees in any case where the amount of the fee is significant enough to chill the company's action which would trigger the fee. This contention, previously raised by Phillips in a request for rehearing in a rulemaking concerning fees applicable to producer matters under the Natural Gas Act, was fully considered and rejected in that proceeding.[11] Phillips has raised no new arguments which persuade us to abandon the conclusion reached in that rulemaking.

List of Subjects in 18 CFR Part 381

General fees.

The Commission Orders:

In consideration of the foregoing, the Commission denies rehearing of the final rule in this docket, and amends Part 381 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 381—[AMENDED]

1. The Authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 C.F.R. 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a-828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

2. Section 381.303(a) is revised to read as follows:

§ 381.303 Review of a Department of Energy remedial order.

(a) Except as provided in § 381.303(b), the fee established for an answer to a Department of Energy remedial order under Subpart I of the Commission's Rules of Practice and Procedure, 18 CFR Part 385, Subpart I (1983), is $2,900. The fee must be submitted in accordance with Subpart A of this part.

* * * * *

3. Section 381.304(a) is revised to read as follows:

§ 381.304 Review of Department of Energy denial of adjustment.

(a) Except as provided in § 381.304(b), the fee established for filing a petition for review of a Department of Energy denial of an adjustment request under Subpart J of the Commission's Rules of Practice and Procedure, 18 CFR Part 385, Subpart J (1983), is $3,700. The fee must be submitted in accordance with Subpart A of this part.

* * * * *

[FR Doc. 84–29074 Filed 11–5–84; 8:45 am]

BILLING CODE 6717–01–M

[11] 49 FR 17435 at 17437. *See also* Order Denying Rehearing in Docket Nos. RM82–30–001 through –003, issued today.

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18 CFR Parts 157, 274, 284, 375, 381, and 385

[Docket Nos. RM82–30–001 through–003, Order No. 394]

Fees Applicable to the Natural Gas Policy Act

Issued: October 31, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: On August 31, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule in Docket No. RM82–30–000, Order No. 394, 49 FR 35357 (Sept. 7, 1984), establishing fees for matters under the Natural Gas Policy Act. The Commission received three timely petitions for rehearing of the final rule in this docket. For the reasons detailed in its order, the Commission is denying rehearing of the final rule.

EFFECTIVE DATE: This order will become effective October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Roland M. Frye, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8316.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

I. Introduction

On August 31, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule establishing fees for matters under the Natural Gas Policy Act (NGPA).[1] The Commission received petitions for rehearing of the final rule from Interstate Natural Gas Association of America (INGAA), Phillips Petroleum Company and Phillips Oil Company jointly (Phillips) and Transcontinental Gas Pipe Line Corporation (Transco). For the reasons stated below and those set forth in the final rule, this order denies these petitions.

[1] 49 FR 35357 (September 7, 1984); 15 U.S.C. 3301–3432 (1982).

INGAA and Transco request rehearing on three issues: (1) whether the Commission has demonstrated the relationship between the particular costs for which the Commission seeks reimbursement and the conferring of any special benefit conferred on the regulated company; (2) whether the Commission's reservation of the "direct billing" option is subjective, vague, arbitrary and capricious; and (3) whether the Commission has provided sufficient data to support the costs to be recovered through fees and thereby permitted the public a meaningful opportunity to comment on this rulemaking. INGAA also contends as part of its second argument that the fee rulemaking set forth no meaningful standards for allocating portions of direct billing to intervenors.

Phillips raises issues (1) and (3) above, and also contends that (1) due to the use of average costs rather than the costs of the particular services, the fees established in the rulemaking are not based on the actual costs of performing the activities for which the fees are charged, and are therefore excessive; (2) the rulemaking should have provided that producers and resellers may recover the fee expenses as an adjustment to natural gas sales prices, the absence of such recovery constituting an unlawful reduction of the maximum lawful NGPA prices and unlawful discrimination in favor of pipelines (who can include their Commission fees in their resale rates); and (3) the Commission should waive fees not only when a company is in dire financial straits but where the amount of the fee is so significant that it chills the filing or prosecution of the application or the effectuation of the contemplated transaction.

II. Disposition of Petitions for Rehearing

A. Benefits

In the final rule in this docket, the Commission established fees for the services and benefits it provides under the Natural Gas Policy Act. The fees were promulgated under the authority of the Independent Offices Appropriation Act (IOAA).[2] The IOAA states, in pertinent part, that:

> It is the sense of Congress that each service or thing of value provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible.

INGAA, Transco and Phillips all argue that the Commission has failed to show that the fees set forth in this rulemaking are commensurate with the benefits received by the affected companies. This argument is virtually identical both to the issued raised by INGAA and Transco in their requests for rehearing of the Commission's rulemaking on fees applicable to the natural gas pipeline matters,[3] and to the issue raised by Phillips (and also Pennzoil Co.) in its request for rehearing of the Commission's rulemaking on fees applicable to producer matters under the Natural Gas Act.[4] In those two rehearings, the Commission thoroughly examined the "special benefits" issue and affirmed the corrections of the initial conclusion in the two rulemakings that the Commission did provide such benefits to the companies to whom the fees are charged. We consider the reasoning and conclusions of those orders denying rehearing applicable to the arguments raised in this docket and therefore again reject petitioners' arguments.

B. Direct Billing

In the final rule in this docket, the Commission recognized that a few proceedings may be so extensive in scope and present such complex issues as to require an extraordinary amount of time and effort. In such cases, the fees established in the final rule would bear no reasonable relationship to the Commission's actual cost of the proceeding. The rule therefore reserved the option of "ordering a direct billing when the processing of the filing begins, or any time up to one year after receiving a complete filing."[5] INGAA and Transco challenge this option as vague, subjective, arbitrary and capricious, and INGAA also criticizes the rule for failing to set forth meaningful standards for allocating portions of the direct billing to intervenors. The Commission has decided that it is better to implement the direct billing procedure on a case-by-case basis initially rather than attempt to develop detailed generic standards without practical experience. Once we gain practical experience, we will be in a much better position to develop sound and workable generic standards. In the meantime, petitioners will have every opportunity to question or challenge any Commission direct billing whenever the issue arises.[6] We therefore reject petitioners' argument concerning direct billing.

C. Sufficiency of Data

INGAA and Transco claim that the data placed in the Commission's public files in insufficient to verify the cost basis for each fee set forth in the final rule. We disagree. The rule itself described in considerable detail the cost basis of these fees, and additional data was placed in the public file for this docket.[7] The Commission has thereby fulfilled its public disclosure obligations under the law.[8]

D. Average Costs

Phillips contends that "due to use of average costs rather than the costs of the particular 'services,' the fees established are not based on the actual costs of performing the activities for which the fees are charged, and are therefore excessive."[9] Phillips' argument overlooks the fact that the average costs were themselves derived from actual costs of the Commission and therefore accurately portray the agency's expenses for providing services and benefits. Moreover, the use of average costs does not automatically result in excessive fees in each case. The very definition of the term "average" costs requires that some cases will cost more than the average (and therefore the petitioners pay less of a fee than they perhaps deserve) while others will cost less than the average (with petitioners paying more than their due). As a practical administrative matter, the time and money necessary to determine the cost of processing each individual docket would be far greater than any resulting benefits.

E. Passthrough

Phillips asks the Commission to permit producers and resellers to pass through to their customers the cost of the fees, as the pipelines are allowed to do. The NGPA does not generally authorize the Commission to increase prices above the levels set forth in the Act. The Commission can increase rates under sections 104, 106, and 109, but only if such increase is just and reasonable under the Natural Gas Act. Phillips does not claim that such increased rates would be just and reasonable, nor has it alleged that confiscation would occur without the

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[2] 31 U.S.C. 9701 (1982).

[3] 49 FR 17437 (April 24, 1984), *appeals docketed sub nom.* Transcontinental Gas Pipe Line Corp., *et al.* v. FERC, Nos. 84–2267 *et al.* (10th Cir. June 19, 1984).

[4] 49 FR 17435 (April 24, 1984), *appeal docketed sub nom.* Phillips Petroleum Co. v. FERC, No. 84–1846 (10th Cir. June 18, 1984).

[5] 49 FR at 35362.

[6] 49 FR 35357 at 35362–35363.

[7] 49 FR 35357 at 35359–35361.

[8] We note that a similar claim by INGAA and Transco was rejected in the order denying rehearing of the rulemaking concerning fees applicable to natural gas pipeline matters. 49 FR 17437 at 17438.

[9] Phillips' Application for Rehearing, filed October 1, 1984, at 2.

recoupment of fees paid (*FERC* v. *Pennzoil Producing Co.*, 439 U.S. 508 (1979)). Certainly, even if the Commission were to allow passthrough under these sections, it would still not address the problem for natural gas priced under the other NGPA sections.

With respect to the discrimination claim by Phillips, neither the NGPA, as noted, nor the Natural Gas Act prohibits the passthrough of fees paid by producers, resellers and pipelines. But it is within the Commission's discretion to treat first sellers and pipelines differently because of the fundamental differences in these laws as they apply to these two regulated entities; first sellers are subject to fixed ceiling prices while pipelines are not.

We also reject Phillips' argument that section 110 could be used to allow producers to passthrough the fees. Such fees do not fall within the types of production-related costs contemplated by NGPA section 110 (see section 110(a)(2)). Moreover, if the producers and resellers qualify for a waiver of, or an NGPA section 502(c) adjustment from, the fees, then they can achieve through those means the same result as Phillips now seeks. Finally, we note that the IOAA provides that the recipient of a benefit—not its customers—may be charged for the agency's costs in providing that benefit.

F. Waiver

Finally, Phillips argues that the Commission should waive fees in any case where the amount of the fee is significant enough to chill the company's action which would trigger the fee. This contention, previously raised by Phillips in a request for rehearing in a rulemaking concerning fees applicable to producer matters under the Natural Gas Act, was fully considered and rejected in that proceeding.[10] Phillips has raised no new arguments which persuade us to abandon the conclusion reached in that rulemaking.

The Commission Orders:

In consideration of the foregoing reasons as well as the reasons set forth in the final rule in this docket, the Commission denies rehearing of that final rule.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-29073 Filed 11-5-84; 8:45 am]

BILLING CODE 6717-01-M

[10] 49 FR 17435 at 17437.

RAILROAD RETIREMENT BOARD

20 CFR Part 395

Employee Protection Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby revises its regulations to provide for implementation of the benefit schedules issued under section 701 of the Regional Rail Reorganization Act of 1973. The Board has been delegated the responsibility to administer these benefit schedules which were issued by the Secretary of Labor. The benefit schedules provide benefits for employees of the Consolidated Rail Corporation who have been deprived of employment. New Part 395 describes the types of benefits available, the eligibility requirements for these benefits and the procedures to be followed in making claims for benefits.

EFFECTIVE DATE: November 6, 1984.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Walter Witkovich, Chief of Adjudication, Bureau of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4810 (FTS 387-4810).

SUPPLEMENTARY INFORMATION: On December 19, 1983, the Board published Part 395 as a proposed rule and solicited comments from the public. 48 FR 56065. Comments were due in the Office of the Secretary to the Board on or before January 18, 1984. The Board received no public comment on the proposed rule.

A number of typographical errors appeared in the proposed rule document, but since they did not affect the understandability or intended meaning of the regulation, publication of a correction document was considered unnecessary. To avoid the possibility of the errors appearing in the final rule document and in the next revision of 20 CFR, however, they are outlined in this final rule document. In addition, a number of minor revisions were made for consistency or to improve readability of the document. The revisions to the proposed rule document printed December 19, 1983, are as follows:

1. On page 56065, column 3, § 395.1(b), line 13, "ans" should be "and".

2. On page 56065, column 3, § 395.2, in the definition *Board*, the word "Means" should be "means".

3. On page 56065, column 1, § 395.2, in the definition *Deprived of employment*, line 12, "to be deprived of employment of" should read "to be deprived of employment if".

4. On page 56066, column 1, § 395.2, in the definition *Deprived of employment*, line 23, "deprived or employment;" should read "deprived of employment;".

5. On page 56066, column 2, § 395.2, in the definition *Employee*, line 7, "portected" should be "protected".

6. On page 56066, column 2, § 395.2, in the definition *Employee*, fourth line from the bottom, "coveyance" should be "conveyance".

7. On page 56066, column 2, § 395.2, in the definition *Normal exercise of seniority*, line 6, "position in a position in a seniority" should simply read "position in a seniority".

8. On page 56066, column 3, § 395.2, in the definition *Resign*, line 7, "of section 508" should simply read "or section 508".

9. On page 56066, column 3, § 395.3(a), last two lines, a change is made to simplify the language from, "shall elect one or other of the following:" to "shall elect one of the following:".

10. On page 56066, column 3, § 395.3(a)(1), last line, the word "or" is added to clarify the language. That line shoud read "either benefit schedule; or".

11. On page 56067, column 1, § 395.3(c)(3)(i), last line, the comma is changed to a semicolon for consistency. That line should read "effect on August 13, 1981;".

12. On page 56067, column 1, § 395.3(c)(3)(ii), last line, the comma is changed to a semicolon and the word and is added for consistency. That line should read "Service Act; and".

13. On page 56067, column 2, § 395.3(h)(1), last line, the comma is changed to a semicolon for consistency. That line should read "1973;".

14 On page 56067, column 2, § 395.3(h)(2), last line, the comma is changed to a semicolon for consistency. That line should read "separation or termination allowance;".

15. On page 56067, column 2, § 395.3(i), second line, "an" should be "An".

16. On page 56067, column 3, § 395.4(f)(1), last line, the word "or" is removed to improve readability.

17. On page 56067, column 3, § 395.4(f)(2), the word "or" is removed to improve readability.

18. On page 56068, column, 2, § 395.5(e)(1), last line, a change is being made to improve readability. The period is changed to a colon.

19. On page 56068, column 2, § 395.5(e)(2), first line, a change is being made to improve readability. Remove

"(2)", and insert "*Example:*". This line will read "*Example:* For the calendar week January 10".

20. On page 56068, column 2, § 395.5(e)(3), first line, "(3)" becomes "(2)". This line will read "(2) Daily subsistence allowances may".

21. On page 56068, column 2, § 395.5(h)(1)(iv), last line, the word "or" is added after the semicolon for consistency. The line should read "claim form in the mail; or".

22. On page 56068, column 3, § 395.5(h)(2), line 11, a comma was missing after the word "diligence", and is inserted for the final rule document.

23. On page 56068, column 3, § 395.5(h)(2), last line, "forgetfrulness" should be "forgetfulness".

24. On page 56068, column 3, § 395.5(i), line 3, "nonagreement" should be "non-agreement" for consistency.

25. On page 56069, column 1, § 395.6(d), line 10, "for" should be "For".

26. On page 56069, column 2, § 395.6(f)(1), last line, the word "or" is removed for consistency.

27. On page 56069, column 2, § 395.6(f)(2), last line, the word "or" is removed for consistency.

28. On page 56069, column 2, § 395.6(g)(1), last line, the word "or" is removed for consistency.

29. On page 56069, column 2, § 395.6(g)(2), last line, the word "or" is removed for consistency.

30. On page 56069, column 2, § 395.7(a)(1), line 3, "students" should be "student".

31. On page 56069, column 3, § 395.7(a)(5)(i), last line, the comma is changed to a semicolon and the word "or" is removed for consistency and to improve readability.

32. On page 56069, column 3, § 395.7(a)(5)(ii), last line, the comma is changed to a semicolon for consistency. That line should read "two years; or".

33. On page 56071, column 2, § 395.9(d)(4), line 5, "a" should be "an".

34. On page 56071, column 2, § 395.9(d)(4), line 7, "there of" should be "thereof".

35. On page 56071, column 2, § 395.9(d)(4), line 8, "al" should be "at".

36. On page 56071 column 2, § 395.9(d)(6), line 1, "not" should be "no".

37. On page 56071, column 2, § 395.9(d)(7), line 9, "constitue" should be "constitute".

38. On page 56071, column 3, § 395.9(e), line 3, "rederee" should be "referee".

39. On page 56071, column 3, § 395.9(e)(1), (2), (3), and (4), the commas are changed to semicolons for consistency; (4) will read "The decision made; and".

40. On page 56072, column 1, § 395.10(d)(2)(iii), last line, the word "or" is added after the semicolon for consistency. The line should read "exceed the amount recoverable; or".

Subchapter I of the Board's regulations is amended by revising the title of Subchapter I, "Milwaukee Railroad Restructuring Act Regulations" to read "Employee Protection Benefits", and by adding a new Part 395, "Regulations Under Title VII of the Regional Rail Reorganization Act".

The Northeast Rail Service Act of 1961 amended the Regional Rail Reorganization Act of 1973 by repealing title V of the latter Act which provided employee protection benefits for ConRail employees and replacing that title with a new title VII. Section 701 of title VII authorized the issuance of benefit schedules to provide employee protection benefits for ConRail employees who were protected under title V and who are deprived of employment. Benefit schedules were issued on December 11, 1981, by the Secretary of Labor. These benefit schedules provided that the Board was to administer the schedules and the Board has been doing so.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required. The information collections associated with this regulation have been approved by the Office of Management and Budget under control numbers 3220–0134 and 3220–0135.

List of Subjects in 20 CFR Part 395

Employee benefit plans, Manpower training programs, Railroad employees, Railroad retirement, Relocation assistance.

Title 20 CFR Chapter II is amended as follows:

1. The table of contents for Title 20, Chapter II, Railroad Retirement Board, Subchapter I, is amended by revising the title of Subchapter I, "Milwaukee Railroad Restructuring Act Regulations" to read "Employee Protection Benefits", and by adding a new Part 395, "Regulations Under Title VII of the Regional Rail Reorganization Act".

2. A new part 395 is added to Subchapter I and reads as follows:

PART 395—REGULATIONS UNDER TITLE VII OF THE REGIONAL RAIL REORGANIZATION ACT

Sec.

395.1 Duties and powers of the Board.
395.2 Definitions.
395.3 Application-election of benefits.
395.4 Eligibility for a separation allowance.
395.5 Eligibility for a daily subsistence allowance.
395.6 Eligibility for health and welfare coverage.
395.7 Eligibility for new career training assistance.
395.8 Eligibility for relocation benefits.
395.9 Initial determinations, reviews and appeals.
395.10 Recovery of benefits.

Authority: 45 U.S.C. 362(1); 45 U.S.C. 797; Pub. L. 97–102, 95 Stat. 1442.

§ 395.1 Duties and powers of the Board.

(a) The Railroad Retirement Board is delegated the responsibility for administering the benefit schedules prescribed by the United States Secretary of Labor on December 11, 1981 pursuant to section 701 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797), as enacted by section 1143 of the Northeast Rail Service Act of 1981, Public Law 97–35, August 13, 1981. The benefit schedules set forth what benefits are available to agreement and nonagreement Consolidated Rail Corporation employees who were protected by the compensatory provisions of Title V of the Regional Rail Reorganization Act, as amended, immediately prior to the effective date of the Northeast Rail Service Act on August 13, 1981 and who were deprived of employment on or after September 1, 1981, or are deprived of employment during the term of the benefit schedules, as a result of actions taken under the Regional Rail Reorganization Act and the Northeast Rail Service Act.

(b) Upon request, ConRail shall provide any information in its possession that the Board might reasonably require to determine eligibility for benefits under this Part. In requesting information, the Board will restrict its request to just that information that the Board needs for proper administration. In the event of any refusal to provide relevant information, the provisions of section 9(a) of the Railroad Unemployment Insurance Act and sections 12 (a) and (b) of that Act (45 U.S.C. 359 (a) and 362(a) and (b)) shall be available to the Board to enforce its request.

(c) Benefit schedules have been distributed to each Railroad Retirement Board district office and may be inspected at any of those offices. Copies are available from the U.S. Department of Labor, Division of Employee Protections, Labor-Management Services Administration, Room N5639, 3rd Street and Constitution Avenue, Northwest, Washington, D.C. 20216.

§ 395.2 Definitions.

As used in this part:

Acquiring railroad means a transferee of ConRail freight properties and service

responsibilities under Title IV, section 305 or 308 of the Act of section 1161 of the Northeast Rail Service Act.

Act means the Regional Rail Reorganization Act of 1973.

Board means the Railroad Retirement Board.

Commuter authority means any state, local, or regional authority, corporation, or other entity established for purposes of providing commuter services, and includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the Maryland Department of Transportation, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, any successor agencies, and any entity created by one or more such agencies for the purpose of operating, or contracting for the operation of, commuter service.

Compensatory provisions of Title V means the provisions of section 505 (b) of Title V of the Act.

ConRail means the Consolidated Rail Corporation.

Deprived of employment means the inability of an employee to obtain a position with ConRail, National Railroad Passenger Corporation, Amtrak Commuter Services Corporation, a commuter authority, or an acquiring railroad through the normal exercise of seniority, except that for purposes of seeking or claiming moving expenses under section 405 of the benefit schedule, an employee shall be deemed to be deprived of employment if required to make a change in residence in order to obtain or retain active employment or, in the case of an employee of ConRail, to retain a position that has been moved to another location and is covered by an agreement entered into pursuant to section 706 of the Act; *provided,* that an employee who is dismissed for cause or is unable to work due to sickness or disability shall not be deemed deprived of employment; and *provided further,* that an employee who is paid a termination allowance under section 702 of Title VII of the Act (45 U.S.C. 797a) shall not thereafter be deemed deprived of employment. In the case of a non-agreement employee, "deprived of employment" refers to his or her inability to obtain, by written application, a position with ConRail, National Railroad Passenger Corporation, Amtrak Commuter Services Corporation, a commuter authority, or an acquiring railroad as defined in the Act (including a transferee under section 305 of the Act), except that for purposes of seeking or claiming moving expenses under section 405 of the benefit schedule, a nonagreement employee shall be deemed to be deprived of employment if required to make a change in residence in order to obtain or retain employment with the employer; *provided,* that a non-agreement employee who is dismissed for cause or is unable to work due to sickness or disability shall not be deemed deprived of employment.

Employee means an individual, including one on furlough, having an employment relationship with ConRail or an acquiring railroad whose employment was governed by the terms of a collective-bargaining agreement and who was protected by the compensatory provisions of Title V of the Act immediately prior to August 13, 1981.

Non-agreement employee means any individual having an employment relationship with ConRail (including a surplus employee) whose employment was not governed by the terms of a collective-bargaining agreement and who was protected by the compensatory provisions of Title V of the Act on and immediately prior to August 31, 1981. But the terms "employee" and "nonagreement employee" do not include any individual who refuses an offer of employment under section 411 of the Act or any individual who refuses a final offer of employment with an acquiring Class I or Class II railroad (including any entity attaining that status on the date of conveyance) under section 305 of the Act, as amended, under a procedure recommended or approved by the Secretary of Transportation.

Group insurance carrier means the Metropolitan Life Insurance Company (or such other insurance carrier, if any, through which the same type of group coverages, as those provided under the plan, may be made available to active non-agreement employees of ConRail pursuant to a contractual arrangement between ConRail and such insurance carrier).

Normal exercise of seniority means the ability of an employee deprived of employment to exercise his or her right under a collective-bargaining agreement to displace a junior employee holding a position in a seniority district within which the employee deprived of employment is required by such agreement to exercise said right.

Plan means the railroad industry health and welfare program consisting of the Railroad Employees National Health and Welfare Plan, GA 23000, and the Railroad Employees National Early Retirement Major Medical Benefit Plan, GA 46000. The term "plan" also means the non-contributory group term life insurance, accidental death and dismemberment insurance and medical coverages (but excluding dental coverage) provided to active non-agreement ConRail employees through the Group Insurance Carrier, except that group term life insurance and accidental death and dismemberment insurance coverage shall be limited to an individual maximum of $10,000 and $8,000, respectively.

Resign means to relinquish all rights to employment, whether established by law, contract or agreement, including but not limited to all seniority with ConRail, all seniority deriving from any agreement entered into under section 411 of the Act or section 508 of the Rail Passenger Service Act, any seniority with railroads acquiring properties under section 305 or 308 of the Act or section 1161 of the Northeast Rail Service Act.

§ 395.3 Application-election of benefits.

(a) *Election.* An application-election of benefits is to be made on the form prescribed by the Board and filed within the time limits set forth in paragraph (d) of this section. Any employee or non-agreement employee who is deprived of employment shall elect one of the following:

(1) Resign his or her ConRail seniority, as described in § 395.4, and accept a separation allowance under Article III of either beneift schedule; or

(2) Remain in furlough status and receive benefits for which he or she may be eligible under Article IV of either benefit schedule.

(b) *Effect of election.* Except as provided in paragraph (f) of this section, an employee or non-agreement employee shall be bound by the election made pursuant to the preceding subsection and shall not be eligible for any payment under an option other than the one the employee selected on his or her application to the Board.

(c) *Waivers.* Any employee or any non-agreement employee who claims benefits under the benefit schedules shall consent to the following waivers:

(1) If such individual claims benefits under Article IV of the benefit schedules, he or she shall be credited with compensation under the Railroad Unemployment Insurance Act and Railroad Retirement Act with respect to the month in which he or she first timely files a claim for benefits, and he or she shall waive any right to claim any further compensation credits by reason of any other benefit claims or payments made pursuant to Article IV.

(2) If such individual claims benefits under Article IV of the benefit schedules, he or she shall waive any claim to an age and service annuity under the Railroad Retirement Act while claiming such benefits;

(3) If such individual claims any of the benefits provided under any provision of the benefit schedules, he or she shall waive:

(i) Any claim for payment under any employee benefit plan or agreement in effect on August 13, 1981;

(ii) Any cause of action for any alleged loss of benefits resulting from repeal of Title V of the Act or from any other provision of the Northeast Rail Service Act; and

(iii) Any claim to a termination payment under section 702 of the Act, if the individual elected a separation allowance, or the amount of the section 702 termination allowance that equals the amount of benefits paid to the individual under Article IV of either benefit schedule.

(d) *Time limits.* An individual who was deprived of employment on or before March 31, 1982 had until June 30, 1982 to file an application-election form. An individual who is deprived of employment after March 31, 1982 has 60 days from the date he or she is deprived of employment in which to file an application-election form. The Board will excuse non-compliance with the filing deadline where a reason of genuine necessity exists.

(e) *Failure to file election.* If an employee or non-agreement employee does not comply with the time limits specified in paragraph (d) of this section, it shall be considered that he or she has elected to receive benefits under Article IV of the applicable benefit schedule.

(f) *Revocation of election.* In the absence of fraud or willful misrepresentation, an employee or non-agreement employee may revoke his or her initial election if all the following circumstances exist:

(1) No benefits have been paid pursuant to the initial election;

(2) A new application-election is filed within the time prescribed for filing an election, and if such time has passed, an explanation is furnished establishing that a reason of genuine necessity existed that prevented the individual from complying with the time limits; and

(3) ConRail has not separated an individual who has elected to separate and is willing to continue the employment relationship of such individual as if no election to separate had been filed.

(g) *Coverage of non-agreement employees.* Any non-agreement employee who is on a leave of absence from a job covered by a collective-bargaining agreement and who elects to bid for a job covered by a collective-bargaining agreement shall, if successful and if subsequently deprived of employment, be covered by the benefit schedule for agreement employees. If a non-agreement employee has rights to a position covered by a collective-bargaining agreement, the individual must exercise his or her rights to that position under the applicable agreement, provided that obtaining that position would not require a change in residence.

(h) *Determining protection under compensatory provisions of Title V.* If an individual had not exhausted his or her entitlement to a Title V monthly displacement allowance as of the date that Title V was repealed, the Board will consider that the individual was protected by the compensatory provisions of Title V immediately prior to the effective date of the Northeast Rail Service Act of 1981. An individual shall not be considered to be so protected under any of the following circumstances:

(1) He or she did not acquire eligibility for a Title V monthly displacement allowance because he or she was not an employee of ConRail or any of its predecessor companies as of January 2, 1974, the date of enactment of Title V of the Regional Rail Reorganization Act of 1973;

(2) He or she was paid a Title V separation or termination allowance;

(3) He or she could not receive any initial or continuing Title V monthly displacement allowances because he or she attained age 65, or retired, resigned, died or was dismissed for cause. But an individual shall not be deemed to have exhausted his or her Title V protection merely by reason of the payment to him or her of moving expense benefits under section 505(g) of Title V.

(i) *Death of employee (including non-agreement employee).* An employee's right to benefits under this Part shall terminate upon his or her death. Benefits due but not paid as of the date of death shall not be paid to any other person but shall instead be returned to the credit of the account from which paid. If an employee dies before filing the election called for by paragraph (a) of this section, no payment under the benefit schedule applicable to him or her shall be made.

§ 395.4 Eligibility for a separation allowance.

(a) *Eligibility of agreement employees.* Any eligible agreement employee who is deprived of employment shall be paid a lump sum separation allowance if he or she:

(1) Resigns his or her ConRail seniority;

(2) Relinquishes all of his or her seniority deriving from any agreement entered into under section 411 of the Act, or under section 508 of the Rail Passenger Service Act, and any seniority with an acquiring railroad;

(3) Relinquishes any seniority deriving from section 1165 of the Northeast Rail Service Act;

(4) Forfeits all reemployment rights with those employers;

(5) Files his or her application-election in accordance with § 395.3; and

(6) Has not been paid a termination allowance under section 702 of the Act.

(b) *Eligibility of non-agreement employee.* Any protected non-agreement employee who is deprived of employment and who elects to forego any customary privileges associated with the prior employment relationship as a non-agreement employee shall be eligible to receive a lump sum separation allowance under Article III of the benefit schedule for non-agreement employees, provided he or she files an application-election as called for in § 395.3.

(c) *Maximum amount of separation allowance.* The maximum amount of the separation allowance payable to any agreement or non-agreement employee shall be $20,000 except that the amount of the allowance shall be reduced by the amount of any health and welfare premiums paid in behalf of any such employee pursuant to § 395.6.

(d) *Creditable service month.* The separation allowance paid to any agreement or non-agreement employee shall be credited as compensation under the Railroad Retirement Act and Railroad Unemployment Insurance Act for the month in which the employment relationship is terminated or, if requested, for the month during which such individual last worked.

(e) *Disqualification under the Railroad Unemployment Insurance Act.* Any agreement or non-agreement employee who is paid a separation allowance pursuant to this section shall be disqualified from receiving unemployment and sickness benefits in accordance with the provisions of section 4(a–1)(iii) of the Railroad Unemployment Insurance Act. The length of the disqualification period shall be calculated using the formula prescribed in section 4(a–1)(iii) of that Act (45 U.S.C. 354(a–1)(iii)).

(f) *Ineligibility for a separation allowance.* No agreement or non-agreement employee shall be eligible to

receive a separation allowance if such individual:

(1) Has received a termination allowance under section 702 of the Act;

(2) Was discharged for cause;

(3) Is unable to work due to illness or injury; or

(4) Is otherwise found not deprived of employment.

(g) *Determinations on eligibility.* The Board shall be responsible for making determinations as to the eligibility of any agreement or non-agreement employee for a separation allowance.

(h) *Application-election form.* A properly completed and timely-filed application-election, which shows that an agreement or non-agreement employee has elected to receive a separation allowance, shall be sufficient basis for honoring such election. No employee shall be required to furnish any additional form for claiming a separation allowance.

(i) *Date of separation.* The employee's date of separation shall be considered to be the day following the date on which the Board determines that he or she is eligible to receive the separation allowance.

§ 395.5 Eligibility for a daily subsistence allowance.

(a) *Eligibility of agreement and non-agreement employees.* An agreement or non-agreement employee who is deprived of employment and who has elected to receive benefits under Article IV of the benefit schedule for agreement employees by timely filing an application-election shall be eligible to receive a daily subsistence allowance for each day he or she is deprived of employment beginning September 1, 1981, not to exceed five days in a calendar week.

(b) *Calendar week.* For the purpose of determining the payment of subsistence allowances, a calendar week shall be considered to be the seven-day period beginning on Sunday and ending on Saturday.

(c) *Daily subsistence allowance claim period.* The claim period for daily subsistence allowance shall be a calendar week. The subsistence allowance payable to any employee shall be calculated based on a claim period comprised of a calendar week.

(d) *Claim form prescribed for daily subsistence allowance.* Any agreement or non-agreement employee who wishes to claim a daily subsistence allowance shall file the form prescribed by the Board for that purpose. The amount of subsistence allowance payable shall be determined based on calendar-week claim periods.

(e) *Amount of daily subsistence allowance.*

(1) The amount of the daily subsistence allowance payable to any agreement or non-agreement employee is $42. But the daily subsistence allowance shall be reduced by the amount of any earnings during the claim period, to the extent that such earnings exceed the amount of benefits otherwise payable under the Railroad Unemployment Insurance Act. For the purpose of this calculation, it shall be considered that unemployment benefits are attributable to each day shown as a day of employment on the claim for daily subsistence allowance. Here is an example that illustrates how this calculation is made:

Example: For the calendar week January 10 through January 16, 1982, an employee is entitled to subsistence allowance of $42 per day for up to five days, or $210. If the employee works on two days and earns $30 one day and $35 the other day, the earnings for the claim period are $65. Unemployment benefits of $25 are considered attributable to each of the days worked. The difference between the employee's earnings for the claim period and the unemployment benefits is $15. Therefore, the employee's subsistence allowance for the period is reduced by $15. The amount payable to the employee is $195.

(2) Daily subsistence allowances may not exceed the aggregate amount of $20,000, minus any health and welfare premiums, retraining expenses and moving expenses paid to or on behalf of the individual.

(f) *Time limit for claiming daily subsistence allowance.* No daily subsistence allowance shall be payable with respect to days in any claim period in any month unless the claim for days in such month is received by the Board no later than 30 days after the last day of the month claimed.

(g) *Claiming in advance.* If a claim is signed prior to the last day of the month for which a daily subsistence allowance is claimed or is received by the Board before the last day of the month in which the allowance is claimed, it shall be returned to the employee with a request either to resubmit the claim at the proper time or to sign and date the claim again.

(h) *Late filing of claim form.*

(1) If a claim is filed late, it shall be considered as timely filed if the employee tried to file on time but was prevented from doing so by circumstances beyond his or her control. Circumstances beyond an employee's control include, but are not limited to, the following:

(i) Delay by a Board office in furnishing a form to the employee;

(ii) Misinformation from a Board employee;

(iii) Misinformation from a railway labor organization official or a railroad employer official;

(iv) Delay, loss, or damage of the claim form in the mail; or

(v) Injury or illness of the employee or member of his or her immediate family.

(2) In determining whether a claim is timely filed, the Board may require the employee to furnish a written statement of the actions he or she took to file his or her claim or of the circumstances the employee believes prevented him or her from filing on time. In no event shall a claim be considered filed on time if it is received by the Board more than a year after the month claimed or if the delay is attributable to lack of diligence, ignorance of the filing requirements or forgetfulness.

(i) *Termination of eligibility.* The eligibility of an agreement or non-agreement employee for a subsistence allowance shall terminate not later than five years from the date the employee makes the election for benefits. But such individual shall cease to be eligible upon his or her death, retirement, dismissal, or resignation from employment with ConRail.

(j) *Determinations on eligibility.* The Board shall make all determinations with regard to eligibility for daily subsistence allowances.

(k) *Withdrawal of claim.* In the absence of fraud, a claim for daily subsistence allowance may be withdrawn by the employee notifying the Board in writing that he or she no longer wishes to claim entitlement to daily subsistence allowance for that month.

§ 395.6 Eligibility for health and welfare coverage.

(a) *Eligibility of agreement employee.* An agreement employee who is deprived of employment and who has not elected to resign his or her ConRail seniority pursuant to § 395.4 to accept a lump sum separation allowance under Article III of the benefit schedules covering agreement employees and who has not elected to forego health and welfare coverage pursuant to paragraph (c) of this section shall be eligible for health and welfare coverage under the Plan for any month for which he or she is not otherwise entitled to such coverage.

(b) *Eligibility of non-agreement employee.* A non-agreement employee who is deprived of employment and who has not elected to forego any customary privileges associated with the prior employment relationship as a non-

agreement employee and accept a lump sum separation allowance under Article III of the benefit schedule for non-agreement employees and who has not elected to forego health and welfare coverage, as described in paragraph (c) of this section, shall be eligible for health and welfare coverage under the Plan for any month for which he or she is not otherwise entitled to such coverage.

(c) *Election to forego health and welfare coverage.* Any employee or non-agreement employee deprived of employment and eligible for health and welfare coverage under section 403 of either benefit schedule may elect to forego such coverage by filing an application-election in accordance with the time limits set forth in § 395.3(d). If an election is not filed, the employee will receive health and welfare coverage under section 403 of the applicable benefit schedule unless he or she is otherwise covered under the Plan.

(d) *Establishing health and welfare coverage.*

(1) The Board will assist in securing health and welfare coverage for any employee or non-agreement employee upon timely notification to the Board by ConRail that such employee is eligible for and not otherwise entitled to such coverage, provided that such employee has not elected to forego coverage. For each policy or plan under which coverage is to be provided, ConRail shall furnish monthly, in a form or manner acceptable to the Board, a notice of all surplus employees or non-agreement employees eligible for and not otherwise entitled to coverage under the policy or plan in the ensuing month. The notice shall identify the coverage month, the insurance carrier and group policy number and provide the social security account number, name, address and union affiliation of each eligible employee or non-agreement employee. Notices of health and welfare eligibility are to be sent to the Director of Unemployment and Sickness Insurance, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois, 60611.

(2) The Board will pay the health and welfare premiums of any individual described above until such time as he or she elects to receive a separation allowance under Article III of either benefit schedule. The amounts of the premiums so paid shall be considered to be part of the $20,000 that the individual could receive as a separation allowance. In the case of an individual who elects to receive a separation allowance, the Board will pay the health and welfare premiums on his or her behalf from the month the employer's obligation to pay such premiums ceases until the effective date of the employee's separation from service.

(e) *Verification of entitlement.* Upon receipt of a notice of health and welfare eligibility, the Board will verify that the employee or non-agreement employee has not elected to accept a lump sum separation allowance under Article III of the appropriate benefit schedule or to forego health and welfare coverage and that such employee's entitlement to health and welfare coverage has not otherwise been terminated or exhausted.

(f) *Ineligibility for health and welfare coverage.* No agreement or nonagreement employee shall be eligible for health and welfare coverage under this section if such individual:

(1) Has received a termination allowance under section 702 of the Act;

(2) Elected to resign and accept a lump sum separation allowance under Article III of either benefit schedule;

(3) Has elected to forego health and welfare coverage as described in paragraph (c) of this section; or

(4) Is otherwise entitled to health and welfare coverage under the Plan.

(g) *Termination or suspension of health and welfare coverage.* The eligibility of an agreement or non-agreement employee for health and welfare coverage under this section shall terminate:

(1) If an aggregate of 19 months of coverage has been extended to such employee under section 403 of either benefit schedule;

(2) If the employee has received the maximum individual benefit of $20,000 in a combination of subsistence allowances, retraining expenses, moving expenses and health and welfare benefits;

(3) Not later than five years from the date the employee makes the election for benefits; or

(4) If the employee otherwise ceases to be eligible for benefits under section 701 of the Act, i.e., by reason of resignation, retirement or death.

§ 395.7 Eligibility for new career training assistance.

(a) For the purpose of this section, except where the language or context indicates otherwise:

(1) *Educational materials* are the personally-owned items required of every student pursuing the same educational program.

(2) *Expenses for board* are charges for meals, laundry, and cleaning and pressing of clothes incurred while occupying temporary lodging described in paragraph (a)(6) of this section or the charges for meals otherwise incurred at the educational institution.

(3) *Fees* are payments other than tuition required by an educational institution from every student taking a particular course.

(4) *New career training* is any educational program that is pursued at or under the auspices of a qualified educational institution and that is intended to assist in the acquiring of skills and knowledges to facilitate the acquisition of employment, provided that such program began after August 31, 1981.

(5) *Qualified institution* is:

(i) An educational institution accredited for payment by the Veterans Administration under chapter 36 of title 38 of the United States Code;

(ii) A state-accredited institution that has been in existence for not less than two years; or

(iii) ConRail, but only with respect to a program of retraining explicitly approved by the Department of Labor or the Department of Transportation.

(6) *Room expenses* are the lodging charges or room rates of the educational institution or third party from whom temporary lodging is obtained for lodging that is necessary to enable the student to complete his or her course of study and is separate from and in addition to the student's permanent residence.

(7) *Tuition* is the normal charge for instruction that an educational institution requires from all similarly circumstanced persons pursuing the same education program.

(b) *Eligibility.* An employee or non-agreement employee who is deprived of employment shall be eligible for reimbursement for retraining expenses incurred after August 31, 1981 in a qualified institution for the purpose of acquiring the skills and knowledge necessary to obtain new employment. The retraining expenses for which reimbursement is available are limited to those defined in § 395.7(a). The employee shall be required to pay such expenses initially and shall then be reimbursed upon submission to the Board of acceptable proof that the employee incurred a reimbursable expense. Such proof shall consist of an authorized receipt issued by a qualified institution, except that if reimbursement is claimed for educational materials not purchased from such institution, the applicant shall submit a statement from the institution that the materials purchased are necessary to a course of instruction in which he or she is enrolled and a receipt from the seller of the materials.

(c) *Claim for new career training assistance.* An employee or non-

agreement employee shall file a claim for new career training assistance within six months of having incurred expenses in an amount equal to or greater than $50 for which the employee is eligible for reimbursement in accordance with this part. Claims for amounts less than $50 shall be held by the Board until at least $50 is claimed unless the applicant indicates on the application that it is his or her final claim. All claims shall be made on the form prescribed by the Board and shall be filed with the Bureau of Unemployment and Sickness Insurance, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois, 60611, together with acceptable proof of the expenses for which reimbursement is claimed.

(d) *Amount of benefits.* New career training assistance shall be payable in reimbursement for actual expenses for room, board, tuition, fees, or educational materials in a total amount not to exceed $3,000.

§ 395.8 Eligibility for relocation benefits.

(a) *Moving expenses for agreement employees.* An agreement employee who is required by normal exercise of seniority to make a change in residence in order to obtain or retain active employment with ConRail (including an employee who must make a change in residence in order to retain a position that has been moved to another location and is covered by an agreement entered into pursuant to section 706 of the Act), the National Railroad Passenger Corporation, Amtrak Commuter Services Corporation, a commuter authority, or an acquiring railroad, shall be reimbursed as set forth in paragraph (c) of this section, to the extent that reimbursement is not made to or for the employee under then-existing agreements or corporate policy.

(b) *Moving expenses for non-agreement employees.* The following non-agreement employees shall be reimbursed as set forth in paragraph (c) of this section, to the extent that reimbursement is not made to or for the non-agreement employee under then-existing agreements or ConRail policy:

(1) A non-agreement employee who is deprived of employment and who is required to make a change in residence in order to obtain active employment in a position covered by a collective-bargaining agreement with ConRail, Amtrak Commuter Services Corporation, or a commuter authority, or an acquiring railroad as defined in the Act (hereinafter referred to in this section as "employing railroads"); and

(2) A non-agreement employee who has been deprived of employment, who is offered a non-agreement position with an employing railroad, and who is required to make a change in residence to obtain such non-agreement position.

(c) *Reimbursable expenses.*

(1) An eligible individual shall be reimbursed for all expenses incurred in moving his or her household and other personal effects, for the traveling expenses of himself or herself and members of his or her family, including living expenses for himself or herself and his or her family, and for his or her own actual wage loss, not to exceed 10 working days. The maximum amount of reimbursement available is $20,000, but such maximum will be reduced by the amount of any benefits paid under §§ 395.5, 395.6, or 395.7.

(2) If the individual owns, or is under a contract to purchase, his or her own home in the locality from which he or she is required to move and elects to sell said home, he or she shall be reimbursed for any loss suffered in the sale of his or her home for less than its fair market value. In each case the fair market value of the house in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby.

(3) An individual may elect to waive the provisions of paragraph (c)(2) of this section to receive, in lieu thereof, an amount equal to his or her closing costs which are ordinarily paid for and assumed by a seller of real estate in the jurisdiction in which the residence is located. Such costs may include a real estate commission paid to a licensed realtor (not to exceed $3,000 or six per centum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage; such costs shall not include the payment of any "points" by the seller.

(4) If the individual holds an unexpired lease on a dwelling that the individual occupies as his or her home, he or she shall be protected from all necessary costs or loss in securing the cancellation of said lease.

(5) An individual who claims lost wages under this subsection shall not be eligible to receive a daily subsistence allowance for the same period.

(d) *Controversy.*

(1) If a controversy arises with respect to the value of the home, the costs or loss sustained in its sale, the costs or loss under a contract for purchase, costs or loss in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the individual, or his or her representative, and the Board. If they are unable to agree, the controversy may be referred by either party to a board of competent real estate appraisers.

(2) The Board of Competent Real Estate Appraisers shall be comprised of one to be selected by the individual or his or her representative and one by the Railroad Retirement Board and these two, if unable to agree upon a valuation within 30 days, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days a third qualified real estate appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(3) The Board shall have the authority to settle a dispute or controversy by compromise if the amount in dispute is equal to or less than the cost of settlement procedures involving the hiring of appraisers. The Board may consider paying to the individual half the disputed amount in such a situation.

(e) *Change in residence.* As used in this section a "change in residence" means change of place of residence occasioned by a change in work location to a place that is more than 30 normal highway route miles from the residence and also farther from the residence than the former work location.

(f) *Filing claims.* Any claim for relocation benefits under this section shall be filed with the Board on the form prescribed by the Board. The claim must be received at the Board within 90 days of the date on which the expenses were incurred.

§ 395.9 Initial determinations, reviews, and appeals.

(a) *Initial determinations with respect to applications and claims.* Each claim for benefits under this Part shall be adjudicated and the initial determination with respect thereto shall be made upon the basis of the claim, the application, and any statement or supplements filed in connection therewith, the evidence submitted by the claimant, and evidence otherwise available. Claims shall be adjudicated and initial determinations shall be made in accordance with instructions issued

by the Director of Unemployment and Sickness Insurance.

(b) *Notice of initial determination.* Notice of an initial determination that denies in whole or in part a claim for benefits shall contain a brief statement of the reason for the denial and shall be communicated in writing to the claimant within 15 days after such initial determination is made. Such notice shall contain an explanation of the claimant's right to review as provided in paragraph (c) of this section and of his or her right to appeal as provided in paragraph (d) of this section. Notice shall be deemed to have been communicated to the claimant when it is mailed to the claimant at the latest address furnished by him or her.

(c) *Review of initial determination and notice of decision upon review.*

(1) *Review.* Within 60 days after notice of an initial determination has been communicated to a claimant, the claimant may make an oral or written request for a review of the initial determination. The Director of Unemployment and Sickness Insurance shall review the determination, shall take any further action that may be required, and shall decide whether to sustain or reverse such determination.

(2) *Notice of decision.* Notice of the decision made upon review shall be communicated to the claimant in writing within 15 days after such decision is made. If the effect of the decision is that the claim is still denied in whole or in part, the claimant shall be notified of his or her right to appeal as provided in paragraph (d) of this section.

(d) *Appeal from an initial determination.*

(1) Any claimant may appeal from an initial determination denying his or her claim for benefits in whole or in part whether or not a review of such determination has been made under the provisions of paragraph (c) of this section. A claimant may file an appeal from an initial determination by mailing a letter to the Bureau of Hearings and Appeals, stating the basis for the appeal. An appeal from an initial determination shall be considered to have been filed when it is received in an office of the Board. Such appeal shall be filed within 60 days from the date on which notice of an initial determination is communicated to the appellant or within 30 days from the date on which notice of the decision made upon review is communicated to the appellant, whichever period ends later. Unless an appeal from an initial determination is filed by the appellant in the manner and within the time provided herein, all rights to further review of the initial determination shall be forfeited.

(2) Within a reasonable time, but not to exceed 45 days, after an appellant has filed an appeal, the Director of Hearings and Appeals shall appoint a referee to act in the appeal. Such referee shall not have any interest in the parties or in the outcome of the proceeding, or have directly participated in the initial determination from which the appeal is made, or have any other interest that might prevent a fair and impartial hearing.

(3) In the development of an appeal, the referee shall have the power to hold hearings, require and compel the attendance of witnesses, administer oaths, take testimony, and make all necessary investigations.

(4) Promptly after being appointed, the referee shall notify all parties properly interested of their right to participate in the proceeding. Upon scheduling a hearing on an appeal, written notice of the hearing specifying the place and time thereof shall be given to the properly interested parties at least seven days before the date of the hearing, unless such notice is waived by the parties. Such notice shall be mailed to the parties at the latest addresses furnished by them.

(5) The appellant, or the appellant's representative, shall be afforded full opportunity to present evidence upon any question of fact, orally or in writing or by means of exhibits, to examine and cross-examine witnesses, and to present argument in support of the appeal. If in the judgment of the referee, evidence not offered by the appellant is available and is relevant and material to the merits of the claim, the referee may obtain such evidence upon the referee's own initiative. If new evidence is obtained by the referee subsequent to an oral hearing, the referee shall notify the appellant or his or her representative that such evidence was obtained and shall describe the nature of the evidence in question. In such event, the appellant shall have the right to submit rebuttal evidence or argument or to an oral hearing to confront and challenge such new evidence. The referee shall protect the record against scandal, impertinence, and irrelevancies, but the technical rules of evidence shall not apply.

(6) If the referee finds that no factual issues are presented by an appeal and that the only issues concern the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim, but no oral hearing shall be held.

(7) All evidence presented by any party or by the party's duly-authorized representative and all evidence developed by the referee shall be preserved. Such evidence, together with a record of the arguments, oral or written, and the file previously made in the adjudication of the claim, shall constitute the record. After an appeal from an initial determination is filed, the compilation of the record shall be initiated by the inclusion therein of the file made in the adjudication of the claim; the compilation of the record shall be kept up-to-date by the prompt addition thereto of all parts of the record subsequently developed. The entire record at any time during the pendency of an appeal shall be available for examination by any properly interested party or by the party's duly-authorized representative.

(e) *Decision of referee.* As soon as practicable after the completion of the record, the referee shall render a decision. The decision shall be based on the record and shall be in writing. Such decision shall contain a brief statement of:

(1) The issue or issues raised;
(2) The evidence submitted;
(3) The findings of fact;
(4) The decision made; and
(5) The reasons therefor.

Within 15 days after rendition of the decision, a copy of the decision shall be mailed to each interested party at the last address of record. The referee's decision shall be the final decision of the Board.

§ 396.10 Recovery of benefits.

(a) *Authorization.* If it is determined that benefits under any provision of this Part have been paid erroneously, the erroneous payment shall be recovered in full unless a compromise is approved under paragraph (c) of this section. An erroneous payment may be recovered by any one or a combination of the methods described in paragraph (b) of this section.

(b) *Methods of recovery.*

(1) *Recovery by cash payment.* The Board shall have the right to require that amounts recoverable be immediately and fully repaid in cash, and any debtor shall have the absolute right to repay such amount recoverable in this manner. However, if the debtor is financially unable to pay the indebtedness in a lump sum, payment may be accepted in regular installments. The amount and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Whenever possible, installment payments should be sufficient in amounts and frequency to liquidate the debt in not more than three years.

(2) *Recovery by setoff.* An erroneous payment of benefits may be recovered by setoff against any benefit to which the employee is entitled under section 701 of the Act, the Railroad Unemployment Insurance Act, or the Railroad Retirement Act. In the case of that individual's death, the erroneous payment may be recovered from any payments due under those Acts to his or her estate, designee, next of kin, legal representative, or surviving spouse. If full recovery is not effected by setoff, the balance due may be recovered by one or more of the other methods described in this part. If the individual dies before recovery is completed, recovery shall be made from his or her estate or heirs.

(c) *Compromise of amounts recoverable.*

(1) The Board or its designee, the Director of Unemployment and Sickness Insurance, may compromise an amount recoverable, provided such amount does not exceed $20,000. Compromise of an amount recoverable may not be considered in any case in which there is an indication of fraud, the presentation of a false claim, or misrepresentation. Compromise is at all times within the discretionary authority of the Board or its designee.

(2) The following indicate the character of reasons that will be considered in approving a compromise:

(i) The debtor's ability to repay the full amount within a reasonable time;

(ii) The debtor's refusal to pay the claim in full and the Board's inability to effect collection in full within a reasonable time by other collection methods;

(iii) Doubt concerning the Board's ability to prove its case in court for the full amount; or

(iv) The cost of collecting the amount recoverable does not justify the enforced collection of the full amount.

(d) *Suspension or termination of collection action.* Collection action on a Board claim may be suspended or terminated under the following conditions:

(1) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe that future collection action may be productive or that collection may be effected by setoff in the near future.

(2) Collection action may be terminated when:

(i) The debtor is unable to make any substantial payment;

(ii) The debtor cannot be located and setoff is too remote to justify retention of the claim;

(iii) The cost of collection action will exceed the amount recoverable; or

(iv) The claim is legally without merit or cannot be substantiated by the evidence.

Dated: October 30, 1984.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 84-29099 Filed 11-5-84; 8:454 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a sponsor name change for several approved new animal drug applications (NADA's) from Philips Roxane, Inc., to Boehringer Ingelheim Animal Health, Inc.

EFFECTIVE DATE: November 6, 1984.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, MO 64502, advised the Center for Veterinary Medicine of a change in corporate name. The new name will be Boehringer Ingelheim Animal Health, Inc. Supplemental NADA's reflecting the new firm name have been filed. This is an administrative change which does not in any other way affect the approval of the firm's NADA's. The agency is amending the regulations in 21 CFR 510.600(c) to reflect the new sponsor name.

List of Subjects in 21 CFR Part 510

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 510 is amended in § 510.600 in paragraph (c)(1) by removing the entry for "Philips Roxane, Inc.," and adding a new entry alphabetically; and in paragraph (c)(2) by revising the entry for 000010, to read as follows:

PART 510—NEW ANIMAL DRUGS

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

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
• • • • •	
Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Highway, St. Joseph, MO 64502.....	000010
• • • • •	

(2) * * *

Drug labeler code	Firm name and address
• • • • •	
000010	Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Highway, St. Joseph, MO. 64502.
• • • • •	

Effective date. November 6, 1984.

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

Dated: October 30, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-29091 Filed 11-5-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. N-84-1122; FR 1808]

Indian Preference Statement of Policy

Correction

In FR Doc. 84-25421 beginning on page 37749 in the issue of Wednesday, September 26, 1984, make the following correction:

On page 37750, first column, **FOR FURTHER INFORMATION CONTACT,** fifth line, the telephone number should read "(202) 755-2980"

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 265

Freedom of Information Act; Disclosure of Street Addresses of Post Office Boxholders

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends postal regulations concerning the disclosure of the names and addresses of postal customers and clarifies the circumstances under which the street address of a post office boxholder will be furnished when needed to effect service of process. The amendment provides that the street address of a boxholder will be disclosed to any person authorized to serve legal process, to the attorney for a party on whose behalf service is to be made, or to a party who is proceeding *pro se*, in any actual or prospective litigation, upon receipt by the Postal Service of written information which establishes that the address will be used for the sole purpose of effecting service of legal process.

EFFECTIVE DATE: December 6, 1984.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp (202) 245–4638.

SUPPLEMENTARY INFORMATION: Under certain limited circumstances which are defined in its regulations at 39 CFR 265.6(d)(3)–(5), the Postal Service makes the names or addresses of post office boxholders available to the public. One such circumstance is when the address of a boxholder is needed to effect service of process. The pertinent regulation, at 39 CFR 265.6(d)(5)(ii), currently provides for the disclosure of a boxholder's name or address only to a person empowered by law to serve legal process upon written certification that the address is required to effect service. The regulation has been interpreted to authorize disclosure for service of process only when the Postal Service is satisfied that a legal action has, in fact, been instituted and is a matter of record in a court.

On April 27, 1983, the Postal Service published a proposed amendment of this regulation to the effect that a boxholder's address would be disclosed only upon a satisfactory showing that the information is needed for service of legal process in connection with litigation which has actually been commenced. 48 FR 19038. The intention was to formalize, by explicit language, the interpretation which had been given to the regulation. It was also proposed to relax the regulation somewhat, so as to permit disclosure to an attorney (whether or not empowered to serve process) who represents a party on whose behalf service is to be made. The proposed amendment also prescribed information to be provided by the requester in order to establish that the boxholder's address would be used solely for the purpose of effecting service.

The public was invited to comment, and, in addition, the proposed amendment was distributed to various state and local bar associations to help assure that all interested parties could make their views known.

Seventeen comments were received. Only two commenters objected in general terms to the Postal Service's disclosure of boxholder addresses for service of process. The balance of the comments favored disclosure, the main point of criticism being that the proposed regulation was too restrictive. It was noted that in some states a legal action cannot properly be commenced until the street address of the defendant is known. For instance, in some states an action is commenced by service of a summons upon the defendant at a residential or business address. In others, although the action is commenced by filing papers with the court, the names and addresses of all parties must be provided to the court at the time the initial papers are filed.

The commenters suggested that restricting disclosure to those situations in which an action has actually been commenced would frustrate the commencement of litigation in those states where a street address is required, and would be unfair to parties seeking to commence actions in those states. The final rule accommodates these suggestions by making it clear that formal commencement of litigation will not be a prerequisite to disclosure so long as the requester certifies that the information is needed and will be used only for service of process in prospective litigation.

One commenter suggested that disclosure should also be made to a party who is acting *pro se*, and pointed out that this is commonly the case in small claims courts. This suggestion has also been accepted in the interest of treating equally those parties who are represented by counsel and those who are not.

Another citicism concerns the requirement that the requester provide the Postal Service a number of items of information about the litigation, such as the names of the parties, court, docket number, description of the action, etc. Two parties objected that the amount of information required is excessive and imposes an unnecessary burden on the requester. The items of information to be provided to the Postal Service are, however, intended to require more of the requester than a mere conclusory statement that the information is needed for service of process. Requiring some detailed information about the litigation is the only means readily available to the Postal Service to ensure against abuse.

This is so particularly in view of the expansion of the regulation to permit disclosure to a party's attorney or to a party proceeding *pro se*. Since we find the requirement reasonable and do not consider that it would impose an undue burden on a requester who truly needs an address for service of process, the final rule requires as a condition of disclosure that the requester provide descriptive details about the litigation which help assure that the address information will be used for the purpose the regulation is intended to serve.

List of Subjects in 39 CFR Part 265

Freedom of information, Postal Service.

Accordingly, 39 CFR is amended as follows:

PART 265—RELEASE OF INFORMATION

In § 265.6, revise paragraph (d)(5)(ii) to read as follows:

The introductory text of paragraph (d)(5) is shown for reader convenience.

§ 265.6 Availability of records.

* * * * *

(d) * * *

(5) Except as provided in paragraph (d)(4) of this section above, the name or address of the boxholder or other recorded information about the boxholder will be furnished only to:

* * * * *

(ii) A person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*, upon receipt of written information that specifically includes: a certification that the name or address is needed and will be used solely for service of legal process in connection with actual or prospective litigation; a citation to the statute or regulation which empowers the requester to serve process, if pertinent; the names of all known parties to the litigation; the court in which the case has been or will be commenced; the docket or other identifying number, if one has been issued; the capacity in which the boxholder is to be served, *e.g.*, defendant or witness; and a brief

description of the nature of the litigation, *e.g.*, domestic relations, personal injury, property damage, indebtedness. By submitting such information, the requester certifies that it is true.

* * * * *

(39 U.S.C. 401; 5 U.S.C. 552)

W. Allen Sanders,

Associate General Counsel Office of General Law and Administration.

[FR Doc. 84-29098 Filed 11-5-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2710-7]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces final approval of the entire Wisconsin State Implementation Plan (SIP) for Lead. In the June 29, 1984 (49 FR 26762) **Federal Register**, USEPA proposed approval of the attainment demonstration, control strategies, new source review portion and monitoring plan as meeting all applicable requirements. No public comments were received by the Agency on these elements of the Lead Plan. As a result, USEPA is approving the entire Lead Plan in today's **Federal Register.**

EFFECTIVE DATE: This final rulemaking becomes effective on December 6, 1984.

ADDRESSES: Copies of this revision to the Wisconsin SIP are available for inspection at:

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

Public Information Reference Unit, EPA, 401 M Street, S.W., Washington, D.C. 20460

Copies of the SIP revision, and other materials relating to this rulemaking, are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 886-6036, before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, USEPA promulgated National Ambient Air Quality Standards (NAAQS) for lead (43 FR 46258). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu g/m_3$), maximum arithmetic mean as averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (the Act) requires each State to submit a SIP which provides for the attainment and maintenance of the primary and secondary NAAQS.

The general requirements for a SIP are outlined in section 110(a)2) of the Ace and USEPA regulations at 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E and in supplementary guidelines for lead SIPs. These provisions required the submission of air quality data, emissions data, air quality modeling, a control strategy, a demonstration that the NAAQS will be attained within the time frame specified by the Act, and provisions for insuring maintenance of the NAAQS.

The requirements specify that all stationary sources specified under those sources categories listed in 40 CFR Part 51 that emit 5 tons/year or more of lead or lead compounds, and any other stationary source that emits 25 tons/year or more, must be analyzed to determine their impact on the lead NAAQS. In addition, USEPA established ambient lead monitoring and data handling requirements (46 FR 44159) in a September 3, 1981 notice, codified at 40 CFR Part 58.

II. Wisconsin Lead SIP

A. Attainment Demonstration and Control Strategies

On September 20, 1983, the State of Wisconsin submitted to USEPA a SIP for the attainment and maintenance of the lead NAAQS. Additional information was submitted on February 14, 1984, and March 14, 1984. Wisconsin's plan includes a discussion of air quality data measured since 1974, an emissions inventory of lead sources, atmospheric dispersion modeling analyses, and the necessary control strategies.

The State's modeling analysis demonstrates that full implementation of the promulgated control measures will provide for the attainment and maintenance of the NAAQS. Further discussion of the attainment demonstration and control strategies may be found in the notice of proposed rulemaking which was published in the June 29, 1984 (49 FR 26762), **Federal Register** and in the technical support documents which are located at Region V's office.

There were no public comments received by the Agency on the proposed attainment demonstration and control strategies. As a result, USEPA is approving these elements of the lead plan in today's **Federal Register.**

B. Lead New Source Review Plan

40 CFR Part 51.18 requires that the State demonstrate that it has procedures for controlling emissions from new sources and from modifications to existing sources. All lead SIPs must provide for preconstruction review of new lead sources that would emit lead in excess of 5 tons per year, and of modifications to existing point sources that would result in new emission increases of 0.6 tons of lead or more per year (See 40 CFR 51.18).

The New Source Review (NSR) requirements for the lead SIP have been satisfied by section NR 154.04 of the Wisconsin Administrative Code, and other statutory and regulatory sections which require permits for the construction of new sources and modification of existing sources. Further discussion of the NSR program may be found in the notice of proposed rulemaking which was published in the June 29, 1984 (49 FR 26762), **Federal Register** and in the technical support documents which are located at Region V's office. There were no public comments received by the Agency on the proposed NSR Program. As a result, USEPA is approving this element of the lead Plan in today's **Federal Register.**

C. Lead Monitoring Plan

The State of Wisconsin submitted a monitoring SIP to USEPA on July 30, 1982, which provided for the establishment of an air quality surveillance network for lead that meets the requirements of 40 CFR Part 58. The submittal included the designation of two proposed National Air Monitoring Station (NAMS) sites in the Milwaukee urban area. These NAMS sites have been in operation for 2 years. The NAMS lead network for Wisconsin was approved by USEPA on July 1, 1983.

In addition, the State is monitoring for lead in the vicinity of Globe Battery. This lead monitor is located just off the northeast corner of the plant and will operate for 2 years. This monitor commenced operation on April 1, 1984.

USEPA proposed approval of the lead monitoring plan in the June 29, 1984 (49 FR 26762), **Federal Register.** Further discussion of the lead monitoring plan

may be found in the notice of proposed rulemaking and in the technical support documents located in Region V's office. No public comments were received by the Agency on this element of the lead Plan. Therefore, in today's **Federal Register**, USEPA approves the revised Wisconsin Air Quality Surveillance Plan as meeting all the requirements of sections 110 and 319 of the Act.

III. Summary

USEPA has evaluated the Wisconsin Lead Plan by comparing it to the requirements for an approvable SIP, as set forth in the above mentioned Code of Federal Regulations. Since the lead Plan meets all applicable requirements of sections 110, 301, and 319 of the Clean Air Act, and since there were no public comments received by the Agency pertaining to this action, USEPA is approving all the elements of the Wisconsin Lead Plan in today's **Federal Register** notice.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Note.–Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1983.

This notice is issued under authority of sections 110, 301, and 319 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601 and 7619).

Dated: October 29, 1984.

William D. Ruckelshaus,

Administrator

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Wisconsin

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

1. Section 52.2570 is amended by adding new paragraph (c)(35) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(35) On September 20, 1983, the Wisconsin Department of Natural Resources submitted its Lead SIP for the entire State of Wisconsin. Additional information was submited on February 14, 1984, and March 14, 1984.

* * * * *

[FR Doc. 84-29117 Filed 11-5-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

Indian Health; Preference in Employment

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the definition of the term "Indian" for purposes of Indian preference in employment in the Indian Health Service (IHS) to continue the application of Indian preference to persons of the Osage Tribe of Oklahoma, who are at least one-quarter degree Indian ancestry. The amendment extends the previous expiration date of July 17, 1984, to October 4, 1985 to permit the tribe to organize and to establish current membership standards.

EFFECTIVE DATE: October 4, 1984.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, (301) 443–1116.

SUPPLEMENTARY INFORMATION: As a result of the April 22, 1977, decision of the U.S. District Court for the District of Columbia in *Tyndall* v. *U.S.*, the Department of Health and Human Services (HHS) is under continuing court order to apply the same definition of the term "Indian" for purposes of Indian preference in employment in the IHS as that adopted by the Department of the Interior (DOI) and to publish the definition as a regulation in the **Federal Register** within 30 days of the DOI's publication.

Rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 8553) generally involve publication of a notice of proposed rulemaking, affording interested persons the opportunity to comment, and publication of the final rule after consideration of the comments received. However, the statute allows the agency to dispense with notice and comment procedures:

(b) When the Agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The court's order in *Tyndall* provides good cause for dispensing with notice and comment procedures in this instance.

On July 11, 1978 (43 FR 29783), the HHS published a final rule which brought the definition of Indian for purposes of Indian preference in employment in the IHS into conformance with the DOI definition. On July 17, 1981 (46 FR 37044, 45), and most recently on October 4, 1984, the DOI amended its definition to continue the application of Indian preference to persons of the Osage Tribe of Oklahoma, who are at least one-quarter degree Indian ancestry. The HHS rule was most recently revised on November 4, 1981 (45 FR 54743) to conform to the DOI's 1981 change.

The membership rolls of the Osage Tribe of Oklahoma, like a number of other tribes, were closed by an act of Congress, and therefore, these tribes did not have current membership standards. The original regulation provided a 3-year period for such tribes to formally organize and establish membership standards and, in the interim, permitted persons of the quarter degree blood of such tribes to qualify for Indian preference rather than having to meet the normal one half degree requirement. This was extended to July 17, 1984 to give the Osage Tribe additional time to establish membership standards. The new DOI regulation and this amendment again extends the expired date one year after publication of the DOI regulation. The quarter degree standard will remain applicable through October 4, 1985 or until the Osage tribe has formally organized and established membership standards, whichever comes first. In addition, under terms of the Court's order the IHS has been obligated to apply the revised DOI definition of Indian for purposes of employment from October 4, 1984, the effective date of the DOI final rule.

Osage Tribal persons, who are employed by the IHS and who received preference in any previous appointment, will continue to be preference eligibles so long as they are continuously employed in positions governed by the Indian Preference Act. The Department of Health and Human Services has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291.

The Department of Health and Human Services has determined that this document does not have a significant economic effect on a substantial number

of small entities. This rule affects only persons of the Osage Tribe of Indians. No notice of proposed rulemaking (NPRM) is required because, as a result of the Court's order, the Department does not have discretion in this matter and, therefore, pursuant to 5 U.S.C. 553(b)(B) the Department is waiving the proposed rulemaking requirements.

List of Subjects in 42 CFR Part 36

Alaska natives, Employees, Eskimos, Government employees, Health, Indian preference, Indians.

Accordingly, the Department of Health and Human Services revises 42 CFR 36.41(e) to read as follows:

Dated: October 29, 1984.
Approved: October 31, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Margaret M. Heckler,

Secretary.

PART 36—[AMENDED]

Subpart E—Preference in Employment

Section 36.41(e) is revised as follows:

§ 36.41 Definitions.

* * * * *

(e) Until October 4, 1985 or until the Osage Tribe has formally organized, whichever comes first, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

* * * * *

(25 U.S.C. 44, 45, 46 and 472; Pub. L. 83-568, 42 U.S.C. 2003)

[FR Doc. 84-29050, Filed 11-5-84; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 31 and 43

[CC Docket No. 83-1347; FCC 84-486]

Amendment of the Commission's Rules Concerning the Uniform System of Accounts for Class A and Class B Telephone Companies and Conforming the Amendments to Annual Report Form M and FCC Report 901

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rulemaking amends Part 31 of the Commission's Rules and Regulations to add accounts for access revenues and expenses. These changes are designed to keep separate those revenues and expenses associated with access charges required in the Commission's decision in Docket 78-72. This action also makes conforming amendments to Annual Report Form M and FCC Report 901.

EFFECTIVE DATE: May 6, 1985, however, a carrier may choose to adopt these changes no earlier than January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Michael E. Wilson, Audits Branch, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, Telephone No. (202) 634-1965.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 31

Communications common carriers, Telephone, Uniform System of Accounts.

47 CFR Part 43

Communications common carriers, Telephone.

Report and Order

In the matter of Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies of the Commission's Rules and Regulations and conforming amendments to Annual Report Form M and FCC Report 901; CC Docket No. 83-1347, FCC 84-486.

Adopted: October 17, 1984.
Released: October 29, 1984.

By the Commission: Commissioner Quello absent.

I. Introduction

1. In a Notice of Proposed Rulemaking (NPRM) released on December 21, 1983, 49 FR 1245, the Commission proposed to revise Part 31, "Uniform System of Accounts (USOA) for Class A and Class B Telephone Companies," (47 CFR Part 31) to establish new accounts to record the carriers' interstate and intrastate access revenues and expenses. We also proposed conforming amendments to the Annual Report Form M (Annual Report for Class A and Class B Telephone Companies) and FCC Report 901, "Monthly Report of Revenues, Expenses, and Other Items—Telephone Companies." These changes were proposed because Part 31 does not have proper accounts in which carriers can record the access revenues and expenses established by the Commission's decision in the Third Report and Order in *MTS and WATS Market Structure (Access Charge Order)*, CC Docket No. 78-72,[1] or that may be required by various state proceedings.

2. Based on an analysis of the comments received in this proceeding, we have decided to adopt, with one minor change, the accounting revisions proposed in our NPRM. We have also decided to make the conforming amendments to the Annual Report Form M and the FCC Report 901. The amendments adopted herein will become effective six months after publication of this Report and Order in the **Federal Register**, except we will allow any carrier, at its option, to adopt these changes for calendar year 1984.

II. Background

3. By our *Access Charge Order* we restructured the method by which exchange carriers will charge subscribers and interexchange carriers for access to the exchange carriers' facilities for interstate telecommunications services. Further, our decisions in that order created new tariff categories covering end user charges and carrier's carrier charges. Finally, a tariff covering billing and collection charges was also required in those instances where a carrier provides such services. As a result of these changes we need to amend our accounting system to provide new accounts to record the revenues and expenses resulting from services provided under these new tariff categories.

III. Proposed Revision

4. In order to meet our objectives of providing accounts for access revenues and expenses and providing detailed accounting support for the Commission's review function, we proposed to amend Part 31 of our Rules and Regulations by creating several new accounts. We proposed accounts 508, "Interstate access revenues," and 509, "Intrastate access revenues," to account for the revenues resulting from the federally tariffed access charges and state tariffed access charges, respectively. This separation would allow the Commission to identify and monitor access revenues relative to interstate telecommunications. We also proposed to require the exchange carriers to subdivide the interstate revenues in account 508 into three subaccounts: End user revenues, Carrier's carrier facilities revenues, and Special access revenues. The end user subaccount would include all revenues collected by the exchange carriers under the interstate end user tariff element in accordance with Part 69 of our Rules. The carrier's carrier facilities subaccount would include all

[1] 93 FCC 2d 241 (1983), *reconsideration*, FCC 83-356, 48 FR 42987 (1983) *further reconsideration*, FCC 84-36 49 FR 7810 (1984).

revenues collected under the carrier's carrier interstate facilities tariff elements, and the special access subaccount would include all revenues collected under the interstate special access tariff element.

5. We proposed account 657, "Interstate carrier's carrier expenses," to record all federally tariffed access charges incurred by the interexchange carriers for access to the exchange carriers' facilities. We also proposed account 658, "Intrastate carrier's carrier expenses," to account for all state tariffed access charges incurred by the interexchange carriers for access to the exchange carriers' facilities.

6. Further, we proposed accounts 527, "Billing and collection revenue," and 647, "Billing and collection expenses." Account 527 would include all revenues collected under the billing and collection tariff element. Account 647 would be used to record expenses incurred by an interexchange carrier or other exchange carrier for having another exchange carriers bill and collect for domestic or international telecommunications services.

7. In addition to the new accounts we proposed to require exchange carriers to maintain supporting records that would enable them to identify revenues by federally tariffed access element. We also proposed to require interexchange carriers to maintain supporting records that would enable them to identify access expenses by federally tariffed access element.

8. Finally, in line with our proposed changes to Part 31, we proposed to make conforming changes to the Annual Report Form M and FCC Report 901 to reflect the proposed accounts. The proposed changes in the schedules were:

A. Form M, Schedule 34, Operating Revenues—to add accounts 508, 509 and 527.

B. Form M, Schedule 35, Operating Expenses—to add accounts 647, 657 and 658.

C. Amend FCC Report 901 to reflect the proposed accounts.

IV. Summary of Comments

9. Interested parties were invited to file comments on our proposal on or before January 27, 1984 and reply comments on or before February 13, 1984. Comments were received from the Arkansas Public Service Comission (APSC); International Communications Association (ICA); Public Utilities Commission of the State of California (California); Tennessee Public Service Commission (TPSC); United States Telephone Association (USTA); and United Telephone System, Inc. (UTS). Comments and reply comments were received from American Telephone and Telegraph Company (AT&T); GTE Service Corporation (GTE); MCI Communications Corporation (MCI); National Exchange Carrier Association, Inc. (NECA); Southern New England Telephone Company (SNET) and the Operating Telephone Companies (OTCs).[2]

10. While the respondents generally agreed that new accounts for access are needed, they did not completely agree with our proposal and instead offered some of their own recommendations for accounting for access. The comments we received focused primarily on three major areas of concern. These were: (1) whether access charges should be recorded as reductions to revenues of the interexchange carrier instead of as operating expenses, (2) whether jurisdictional distinctions should be used as a basis for establishing accounts within Part 31, and (3) whether our proposal for access accounting provides sufficient information to enable the Commission to exercise its oversight. After we address these three areas of concern, we will then address the other issues which were raised in the comments to our proposal.

11. *Treatment of carrier's carrier access payments.* Perhaps the most significant issue was raised by AT&T in its recommendation to record access charges as a reduction to the revenue of the interexchange carrier rather than as an expense as we proposed. AT&T suggests a netting approach by which payments to exchange carriers for carrier's carrier access charges are treated as a reduction in the revenue accounts of the interexchange carrier by means of contra-revenue accounts. AT&T gives several reasons in support of its netting approach. First, AT&T states that the proposed accounting rule for access revenues and expenses would cause a significant overstatement of telecommunications industry revenues. The claimed overstatement would result from access charges being counted as revenue twice—once as revenue to the interexchange carrier for interexchange calls and again as revenue to the exchange carrier for access charges paid to the local exchange carrier. Second, AT&T states that historically payments made to Bell Operating Companies and to Independents to compensate them for their costs were treated as a reduction to the revenues of the interstate carrier and that this has been the accepted way of recording and presenting revenues for each of the carriers and for the industry as a whole. It states that although the access charge plan replaces the settlements process for compensating local exchange carriers, the exchange carriers will continue to be the ultimate providers of local access facilities and they ultimately will receive the revenues for providing this access. Thus, AT&T claims that it is appropriate to account for payments to exchange carriers for carrier's carrier access charges as reductions to revenue of the interexchange carrier to avoid a discontinuity between the pre-divestiture and post-divestiture revenue reporting procedures prescribed by the Commission. Since a portion of the carrier's carrier access charges will be a transitional charge to be replaced in steps by end user charges, AT&T states that using contra-revenue accounts will also avoid multiple future repetitions of the discontinuity. It claims that, unless a contra-revenue account is used, each change in the way amounts for local access are collected will produce a change in revenues reported by the industry and by interexchange carriers even if the amounts collected from users remains exactly the same.

12. Third, AT&T believes that the revenues reported by an interexchange carrier should reflect only revenues attributable to the provision of interexchange services since that is the only segment of telecommunications services that the interexchange carrier directly provides. Further, AT&T states that interexchange rates include an amount sufficient to recover local access changes and, unless its netting approach is adopted the interexchange carriers, which provide no local service, will be reporting these local access charges as part of their revenues.

13. Finally, AT&T states that our proposed access accounting may have gross receipts tax implications. Because access charges are being counted twice, AT&T contends that local tax authorities may seek to tax these same amounts twice and thereby attempt to place an unjust burden of double taxation on ratepayers from whom such additional amounts would have to be recovered. AT&T estimated a possible

[2] The Operating Telephone Companies include the following Bell Operating Companies: NYNEX Service Company on behalf of New England Telephone Co. and New York Telephone Co.; New Jersey Bell Telephone Co.; the Bell Telephone Company of Pennsylvania; the Diamond State Telephone Co.; the Chesapeake and Potomac Telephone Companies of Washington, D.C., Virginia, Maryland, and West Virginia; Southern Bell Telephone and Telegraph Co.; South Central Bell Telephone Co.; Ohio Bell Telephone Co.; Michigan Bell Telephone Co.; Indiana Bell Telephone Co.; Illinois Bell Telephone Co.; Wisconsin Bell; Northwestern Bell Telephone Co.; the Mountain States Telephone and Telegraph Co.; the Pacific Northwest Bell Telephone Co.; Pacific Bell; Nevada Bell; and Southwestern Bell Telephone Co.

tax impact of $225 million by applying its 1984 budgeted access charge amount to the prevailing gross receipts tax rate by state.

14. In its reply comments MCI argues against the suggestion that carrier's carrier access charges should be netted against the interexchange carrier revenues. MCI believes that gross operating expenses must be reported to reflect the organizational independence of companies in the new environment. MCI maintains that access charges are the cost of operation for all interexchange carriers, that netting or the use of contra-revenue accounts would destroy the comparability of financial statements among interexchange carriers and that this lack of comparability would preclude the reader of a financial report from analyzing trends within a company. MCI states that the claim that failure to net will distort industry statistics has no validity because there is no such thing as financial reporting for an industry as a whole. MCI contends that the netting treatment would be inconsistent with the principle of financial reporting promulgated by the Financial Accounting Standards Board in its "Statements of Financial Accounting Concepts" which asserts that financial reports should disclose the relevant information of a company's economic affairs. In connection with the issue of overstatement of industry revenues and AT&T's problem with the gross receipts tax, MCI states that while avoidance of double taxation is a valid concern, double taxation can usually be avoided by taking advantage of appropriate exemptions. MCI contends that the availability of such exemptions does not depend on "netting" for accounting purposes. Finally, MCI claims that the netting of revenues and expenses is at variance with the principle of revenue measurement and that access charge expenses do not qualify as offsets to revenue.

15. In its reply comments AT&T reiterates its argument against recording access charge payments by interexchange carriers as operating expenses. AT&T states that the accounting and resulting financial reports should accurately reflect the relationship between the interexchange carriers who make the access charge payments and the exchange carriers who ultimately receive these amounts. AT&T contends that the relationship between the interexchange carrier and exchange carrier differs from that in other industries. What is unique, AT&T argues, it that while a complete service is provided to interstate telecommunications customers, the facilities used to provide each segment of that service are provided by separate carriers that are responsible for their own particular facilities and each carrier is entitled to a return only on its own facilities. AT&T further states that if access charges are treated as an expense to the interexchange carrier, the total billings to customers must necessarily remain as part of the revenues of the interexchange carrier and be reflected on financial statements as if the interexchange carrier had provided the facilities for both local access and interexchange transport. AT&T contends that if access charges are treated in this manner the usefulness of the resulting financial statements would be diminished.

16. *Jurisdictional identification of revenues.* Eight of the commenters support the creation of separate accounts for federally tariffed and state tariffed access charges. GTE, OTCs, USTA, and UTS oppose the creation of interstate and intrastate access revenue and expense accounts as proposed in the NPRM. GTE contends that the creation of additional accounts reflecting jurisdictional distinctions is unnecessary and a departure from the scheme of the present Part 31 by moving a Part 67 activity into Part 31. GTE believes that creating accounts that reflect jurisdictional distinction would raise a legal problem with subsection 410(c) of the Act which provides that the Commission shall refer to a federal-state joint board any proceeding concerning the jurisdictional separation of common carrier properties and expenses between interstate and intrastate operations. The OTCs state that while the Commission's proposal to separate interstate and intrastate access revenues and expenses does not present any significant administrative problem to the telephone companies, it creates a potential inconsistency with the approach now required under the existing USOA. USTA suggests that the Commission should be careful in this docket to avoid jurisdictional and customer oriented approaches as a basis for prescription of carrier accounts and maintains that if jurisdictional or customer data are needed, they could be provided in such reports and subsidiary records as the Commission may require. UTS states that there is no need for interstate and intrastate account structures if carriers are required to maintain supporting records that identify revenues and expenses by tariffed access elements because all regulatory information needs could be satisfied through specified accounting rules, procedures, and supporting subsystems.

17. Both AT&T and MCI state in their reply comments that contrary to the suggestion of GTE, establishing separate revenue accounts for interstate and intrastate access charges would not require convening a joint board. AT&T states that subsection 410(c) of the Act pertains only to jurisdictional separations of common carrier properties and expenses and not to revenues. Also, AT&T states that, since access charges are tariffed interstate and intrastate, merely requiring that the amounts paid under these tariffs be recorded separately would not be a jurisdictional separation issue with the contemplation of subsection 410(c).

18. Several of the commenting parties suggested that the Commission go one step further and require that billing and collection revenues and expenses be accounted for separately between interstate and intrastate. These parties state that such a requirement would enble the Commission to indentify and monitor billing and collection charges in the same way that it would be able to monitor access charges. NECA argues that it needs jurisdictionally separated revenues to perform its mandated functions. However, NECA states that if the Commission determines that revenues need not be jurisdictionally identified in the USOA, NECA could obtain the data it needs from supporting records of exchange carriers. In its reply comments GTE states that it finds no logic in forcing jurisdictional distinctions into billing and collection accounts under Part 31, and it believes that the nature of billing and collection is quite distinct from the imposition of access charges.

19. *Sufficient information.* MCI and ICA were concerned about the sufficiency of the information the Commission proposed to require in the NPRM. In its comments MCI states that the amendments proposed are not sufficient to enable the Commission to exercise its oversight. MCI states that the Commission should require the establishment of separate subaccounts for the recording of revenues and expenses by feature groups. MCI believes that the Commission should also require the reporting of cost data with the same degree of detail as MCI wants for the revenue accounts. MCI asks that separate accounts to reflect directly assignable expenses common to all feature groups be established and suggests that consideration be given to the establishment of subaccounts to distinguish different types of special

access revenues, such as voice grade or wide band.

20. ICA recommends that our proposed accounting be modified so as to require exchange carriers to segregate both revenues and expenses between recurring and nonrecurring amounts for both interstate and intrastate access charges. ICA contends that such a separation would enable the Commission to investigate and subsequently monitor these charges. ICA also contends that its proposal would allow the Commission to reduce its reliance on special carrier studies when reviewing carriers' recurring and nonrecurring access charges.

21. In its comments NECA states that while it agrees the proposed account for interstate access revenues should be subdivided into three subaccounts, it believes the revenues to be recorded in each of these subaccounts should parallel the mandatory and voluntary revenue pools established in the Commission's *Access Charge Order*. NECA recommends the following subaccounts: (1) end user revenues, (2) carrier common line revenues, and (3) traffic sensitive revenues. The end user revenues subaccount is to be the same as that proposed in the NPRM; the carrier common line subaccount is to include all revenues collected under the carrier common line usage elements of the interstate access tariffs and the special access surcharge revenues; and the traffic sensitive revenues subaccount is to include all revenues collected under tariff elements which the Commission has defined as traffic sensitive in its *Access Charge Order*, as modified on reconsideration, in CC Docket No. 78–72.[3] The OTCs suggest that in view of the Commission's expressed intention in Docket 78–72 to shift a substantial part of the cost recovery burden for interstate access from the carrier common line charge and the special access surcharge to customer line charges, a new account be created to record these revenues. The OTCs further suggest that this new revenue account be divided into subaccounts for customer line charges, carrier common line charges and special access surcharges.

22. TPSC states that modifications should be made to the account description proposed in the NPRM for account 509. TPSC suggests language to modify account 509 to require that it be subdivided in the same manner as account 508, as appropriate, in each state jurisdiction. TPSC contends that the language it proposes to account 509 would allow necessary state regulatory flexibility while not requiring the Commission to try to anticipate what the several states may do.

23. UTS states that the subaccounts proposed in the NPRM are unnecessary and contends that since the NPRM proposes to require that carriers maintain supporting records for identifying revenues and/or expenses by tariffed access element, all regulatory information needs could be satisfied through special accounting rules, procedures and supporting subsystems. UTS states that the proposed revenue subaccounts place an unnecessary restriction on exchange carrier accounting procedures and systems and that such details are inherent in accounting subrecords and supporting systems.

24. NECA states that the detailed subaccounts proposed by MCI and ICA are inappropriate, would infuse the accounting systems of exchange carriers with unnecessary complexities and in many cases would be administratively burdensome. NECA contends that an accounting system must be stable over time and that the adoption of MCI's suggestions would require embodying in the USOA the access charge transitional mechanism adopted by the Commission.

25. In their reply comments the OTCs state that the greater accounting detail suggested by MCI would create a less flexible and more expensive accounting system. The OTCs contend that they are unable to segregate expenses by special access classes of service or by feature group. The OTCs state that Part 67 of the Commission's Rules governs interstate expense allocation and that MCI's proposal would introduce recordkeeping based on jurisdictional separation into Part 31. The OTCs argue that the further segregation of revenues which MCI proposes would be a meaningless distinction without any public benefit, would create an additional cost burden for ratepayers and would entail a considerable expense to the telephone companies. The OTCs also state that they do not agree with NECA's recommendation that interstate access revenues should be subdivided into three subaccounts which parallel the mandatory and voluntary revenue pools established in the Commission's *Access Charge Order* because pooling arrangements are not identical for all telephone companies and it is possible that pooling arrangements will change in the future.

26. *Other issues.* Several other issues were raised in the comments the Commission received. AT&T and MCI both state that sufficient data must be provided by the local exchange carriers to allow the interexchange carrier, which does not perform the call recording function, to identify separately access charge amounts for the state and interstate jurisdictions and to maintain supporting records which permit identification of access charges by federally tariffed access element. The OTCs contend that existing telephone company billing for switched access charges presently permits AT&T to identify costs by federally tariffed rate element and by jurisdiction. GTE states that this proceeding is not the appropriate vehicle for consideration of AT&T's proposed billing detail requirements and that if AT&T wishes to pursue this issue, it should file a petition for rulemaking.

27. GTE, OTCs, and USTA comment that the Commission should make a concerted effort to adopt interim changes to Part 31 which will support the general concepts developed by the Telecommunications Industry Advisory Group (TIAG) in revising the Uniform System of Accounts.[4] AT&T states that the ongoing work in connection with CC Docket No. 78–196 should not be a controlling factor in this proceeding.

28. UTS and OTCs state in their comments that the Commission's proposed rules might require that the same transaction be recorded as access revenues and access expenses when the interexchange carrier and the exchange carrier are the same entity for certain interstate routes. The OTCs argue that such a situation where a carrier would internally charge itself to reflect both access revenues and expenses is meaningless and also a violation of generally accepted accounting principles. UTS urges a classification of the definitions of "local exchange carrier," "other exchange carrier," and "interexchange carrier" in the proposed rules to prevent duplicate reporting of the same transaction in the event parallel functions are performed by one carrier.

29. In their comments the OTCs requests that the terms "tariffed access element" and "special access" be defined. The OTCs state that it is unclear whether "special access" refers to the $25 surcharge which is to be imposed on nonmeasured access lines or to the charges relating to a broader category of access functions. California recommends that the Commission modify the NPRM's proposed accounting amendments to reflect the FCC's

[3] NECA states that the traffic sensitive revenues are defined as: Limited Pay Telephone, Line Termination, Local Switching (LS1 and LS2), Intercept, Information, Common Transport, Dedicated Transport, and Special Access.

[4] CC Docket 78–196, 88 FCC 2d 83 (1983).

postponement of the imposition of the interstate access charge on residential and single line business customers until mid-1985. California also recommends that a note be added to the account description for intrastate access revenue to reflect the fact that the subdivision of this account and supporting documentation required of carriers will be addressed by the state regulatory authorities having primary rate jurisdiction. SNET states that it is planning to make the NPRM's proposed accounting revisions effective with access tariff implementation on the assumption that the Commission will make no changes to the account structure as proposed in the Notice. SNET states that if changes do occur to the proposed accounting amendments, SNET could not readily implement the changes without significant additional expenditures. APSC states that it does not support the NPRM's proposal to make the accounting revisions effective six months after a final decision is issued, nor does it support the proposal to permit carriers voluntarily to implement these revisions when the access tariffs are implemented. APSC recommends that the NPRM's accounting revisions be made retroactive to the date the access tariffs are implemented.

V. Discussion

30. *Treatment of carrier's carrier access payments.* Of the comments we received, only AT&T urged the Commission to adopt a netting approach and treat carrier's carrier access charges as a reduction to the revenue of the interexchange carriers. It expressed concern that without the use of contra-revenue accounts, access charges will cause a discontinuity between pre-divestiture and post-divestiture revenue reporting procedures and will cause a significant overstatement of industry revenues.

31. It must be recognized, however, that because of divestiture, today's telecommunications environment has changed—the industry, now operating in an environment composed of interexchange carriers and exchange carriers, will no longer be characterized by the sharing of revenues that existed in the pre-divestiture period. Users of financial data will have to adjust to the changes in the environment and will have to consider the effects of these changes in their analysis. It is incumbent upon the providers of the financial information to disclose the pertinent facts of the changes.

32. AT&T also states that the revenue reported by interexchange carriers should reflect only revenues attributable to the provision of interexchange services since that is the only segment of telecommunication services that the interexchange carrier directly provides. However, we consider the access elements discussed herein to be part of the interexchange service provided to the customer and the cost of providing it to be part of the total operating expense of interexchange carriers. As such, it should be accounted for as an expense item rather than as a contra-revenue item. Likewise, the interexchange carrier should record as a revenue the amounts collected to cover the cost of these elements of the service it provides to customers. Our proposed accounting, therefore, merely reflects what is in the carrier's tariffs which are established at levels to recoup total expenses—part of which is access. Accordingly, the carrier will be required to record as revenue the total amounts that are collected under its Federal tariffs. When amounts are netted in the manner proposed by AT&T, the revenues recorded no longer reflect the Federal tariff, and as MCI has stated, the procedure would be at variance with the generally accepted accounting principle of revenue measurement. In contrast, we believe that our proposed accounting requirements are a proper reflection of the economic and structural realities of today's telecommunications environment which does not provide for revenue sharing as it did before divestiture.

33. In a footnote to its comments AT&T raises the question of a potential $225 million impact our proposal may have on its gross receipts taxes. While we understand AT&T's concern, we do not believe that creating contra-revenue accounts to reduce revenues is the solution. Furthermore, classifying access charges as contra-revenues for tax purposes is a matter outside our jurisdiction. When or where access revenues are in substance subject to gross receipts tax is an issue for the various taxing authorities. In this proceeding it is our purpose to prescribe accounting and reporting requirements that provide a clear picture of a carrier's operations.

34. *Jurisdictional identification of revenues.* In our NPRM we proposed to establish separate revenue and expense accounts for federally tariffed access charges and state tariffed access charges to allow us to identify and monitor access revenues and expenses relative to interstate telecommunications. While eight of the twelve comments we received were in favor of our creating separate accounts for federally tariffed and state tariffed access charges, several of the comments object to our reflecting jurisdictional distinctions in the USOA. Several commenters also stated that the segregation by jurisdiction may require referral to the Joint Board.

35. While the existing USOA does not now require separate accounts for interstate and intrastate revenues and expenses, we do not find this to be sufficient reason for not providing jurisdictional accounts. Because access charges are tariffed interstate and intrastate, they are readily determinable and are capable of being recorded in appropriate jurisdictional accounts. Such separate accounts would aid us in the identification and monitoring of access charges.[5] We do not agree with those commenters who state that the segregation by jurisdictions may require referral to the Joint Board. We are requiring only that revenues and expenses *that have already been identified by jurisdiction* be accounted for separately. For this separate jurisdictional accounting no Joint Board procedure is required. The recording of the revenues and expenses by jurisdiction does not bind the Joint Board or the state and Federal commissions from considering any or all of the expenses so recorded in appropriate proceedings.

36. Several parties suggest that we create accounts to record separately interstate and intrastate billing and collection revenues on the exchange carrier's books and to create separate accounts to record interexchange carrier's interstate and intrastate billing and collection expenses. We agree with this suggestion and therefore have decided to adopt it. Because of the sensitive nature of these costs and the rapidly changing environment it is important for the Commission to monitor billing and collection revenues at least on an interim basis. This requirement will enable the Commission to identify and monitor billing and collection charges in the same way we will be able to monitor access charges.

37. *Sufficient information.* We do not share MCI's and ICA's view that our proposed account structure for access needs to be further disaggregated. Requiring further disaggregation of the access accounts to obtain more detail is not needed at the current time and cannot be justified in light of the burden that would be placed on the carriers. We also do not agree with NECA's recommendation that interstate access revenues should be divided into end user revenues, carrier common line revenues and traffic sensitive revenues in order to parallel the mandatory and

[5] We are publicly committed to intensive monitoring of the impact of our Access Charge Decision. *See* Further Reconsideration Order at para. 9. Without adequate accounting we cannot fulfill our commitment.

voluntary revenue pools established in the Commission's *Access Charge Order*. We see no need to create subaccounts to parallel the mandatory and voluntary revenue pools because pooling arrangements are not identical for all telephone companies. It is also possible that these pooling arrangements will change in the future.[6]

38. Because we are requiring carriers to maintain documentation to identify each tariffed element of the carrier's carrier facilities revenues and each surcharge element collected under special access charges, we believe that the accounts and subaccounts we are creating are sufficient to enable us to monitor access charges and to exercise our oversight function. Therefore, we see no need to adopt the OTCs' suggestion that the tariffed elements of carrier common line charge, special access surcharge and end user charges be subaccounts of a new revenue account.

39. There is no need to adopt TPSC's suggestions that account 509 be subdivided in the same manner as account 508 since tariff requirements for state access revenues will vary from state to state. However, the states have the necessary regulatory flexibility to determine their own data needs and requirements.

40. We cannot agree with those commenters who took the position that the subaccounts and access element data that we are requiring are unnecessary. To do our analysis, it is important for us to receive information from the carriers that is maintained in a consistent manner. This can only be done by requiring carriers to maintain data in a prescribed manner. Moreover, because the access revenue and expense data we are requiring is significant in dollar amounts and will be recurring in nature, they should be recorded in appropriate accounts. Furthermore, the creation of specific accounts and reporting requirements will contribute to the Commission's goal of reduced reliance on special carrier studies for use in routine regulatory tasks.

41. *Other issues.* Several other issues were raised in the comments to our NPRM. AT&T requests that the exchange carriers be required to supply sufficient data to interexchange carriers for interexchange carriers to identify separately access charge amounts for the state and interstate jurisdictions, and that the exchange carriers be required to maintain supporting records which permit identification of access charges by federally tariffed access element. This request of AT&T deals with the imposition on exchange carriers of a requirement concerned with billing details furnished to interexchange carriers and as such clearly falls outside the scope of this proceeding. CC Docket 83–1145, *Investigation of Access and Divestiture Related Tariffs*,[7] has addressed the bulk of the problems dealing with the exchange carriers' provision of the data that is essential for an interexchange carrier to comply with the accounting and record maintenance requirements proposed in this proceeding.

42. Several of the comments dealt with the work of the TIAG to develop a revised USOA and recommended that the Commission adopt interim changes to the USOA which are consistent with the approach and concepts developed by the TIAG. We believe that the changes in this proceeding are consistent with TIAG recommendations which we presently have under consideration. As we stated in our NPRM, the proposed changes in this proceeding are interim changes to the USOA. Our accounting requirements for access may be further revised, and we expect those revisions to be reflected in the final rewrite of Part 31 in Docket 78–196.

43. UTS and OTC brought to our attention those situations where the interexchange carrier and the exchange carrier for certain interstate routes may be the same entity. When this situation occurs for a carrier, that carrier would not internally charge itself both access revenues and expenses. The new accounts we are adopting are for recording transactions between carriers which are separate entities. A carrier would record access revenues or expenses only when it receives or else provides access to another entity under the terms of its access tariff.

44. UTS urged a classification of the definitions of "local exchange carriers," "other exchange carrier" and "interexchange carrier." These three terms are used in our account description for the billing and collection accounts. We used the term "local exchange carriers" to describe those exchange carriers which provide billing and collection services for interexchange carriers and other exchange carriers. These other exchange carriers would be primarily small independent telephone companies. Finally our reference to interexchange carrier means any carrier subject to Part 31 of our Rules that pays access charges to an exchange carrier.

45. The OTCs requested that the terms "tariffed access element" and "special access" be defined. Tariff access elements are those access elements prescribed in Part 69 of our rules. Special access is defined in the *Access Charge Order*. Currently, the special access revenues refer to the $25 surcharge which is to be imposed on certain private lines and all revenues under the special access element as described in § 69.115.

46. We cannot accept California's recommendation that the Commission modify the NPRM's proposed accounting amendments to reflect the FCC's postponement of the imposition of the interstate access charge on residential and single line business customers until mid-1985. While the residential and single line business customers' charges have been postponed, there are already in place customer line charges for multiline business customers. The mere fact that some customer line user revenues have been postponed does not eliminate the need for the revenue subaccount, nor does it make that subaccount description wrong. We also see no need to follow California's recommendation that a note be added to the account description for intrastate access revenue to reflect the fact that the subdivision of this account and supporting documentation required of carriers will be addressed by the state regulatory authorities. All state commissions are well aware of their jurisdiction and what aspects of the carriers' services fall into that jurisdiction.

47. We were concerned with SNET's statement that it planned to implement our NPRM's proposed accounting revisions under the assumption that the Commission would make no changes to the account structure proposed in the Notice. SNET further stated that if the Commission does make changes to the proposed accounting revisions, SNET could not readily implement the changes without significant additional expenditures. We wish to remind SNET that a Commission NPRM is merely a proposal which is subject to change. Incurring the cost of implementing proposed accounting rules before they are finalized by the Commission seems to be a management decision which we will not judge the merits of in this proceeding. However, knowingly implementing a proposed accounting system when it is only a proposal and subject to change should not be used as a reason to dissuade the Commission

[6] NECA also noted in its comments that it has the ability to obtain from the carriers data required to perform the settlement function.

[7] 48 FR 49918, October 28, 1983.

from adopting changes it determines are necessary.

48. Finally, APSC recommended that our accounting revisions be made retroactive to the date that the access tariffs were implemented—instead of making them effective six months after a final decision is issued. We are bound by the statutory requirements of section 220(g) of the Communications Act of 1934, as amended, which states that "notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect." Although we are bound by these statutory requirements, we encourage carriers to implement voluntarily these revisions as soon as possible.

VI. Other Matters

49. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we believe the above discussion sets forth the purpose of the proposed amendments. We certify that the accounting changes can be readily implemented by all carriers subject to Part 31 without significant economic impact.

50. The collection of information requirements contained in this rulemaking have been submitted to OMB for review under section 3504 of the Paperwork Reduction Act of 1980, 44 U.S.C. 35. All questions concerning the collection requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Communications Commission. *See* 5 CFR 1320.13(a).

VII. Ordering Clauses

51. Accordingly, it is ordered, pursuant to the Provisions of Sections 4(i) and 220(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 220(a), that Part 31 is hereby amended as set forth in Appendix A, effective six months from the date that this item is published in the Federal Register except where a carrier chooses to adopt these changes effective no earlier than January 1, 1984.

52. It is further ordered, That the FCC Annual Report Form M is hereby revised as set forth in this Order and Appendix B effective with the Form M for calendar year 1984.

53. It is further ordered, That the FCC Report 901 is hereby revised as set forth in this Order and Appendix C effective with the Report 901 for January 1985.

54. It is further ordered, That Docket No. 83-1347 is hereby terminated.

(Secs. 4, 220, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

1. Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies is amended to add the following accounts in § 31.5–53:

§ 31.5–53 Operating revenue accounts to be maintained. (Class A and B companies)

* * * * *

Access Revenues

508 Interstate access revenues
508:1 End user revenues
508:2 Carrier's carrier facilities revenues
508:3 Special access revenues
509 Intrastate access revenues

* * * * *

Miscellaneous Revenues

527 Interstate billing and collection renenues
528 Intrastate billing and collection revenues

* * * * *

2. Section 31.508 is added to read:

§ 31.508 Interstate access revenues.

(a) This account shall include all federally tariffed charges assessed by exchange carriers upon interexchange carriers and end users for access to the local exchange network for interstate or international telecommunications.

(b) This account shall be further subdivided into the following three (3) subaccounts: 508.1 End user revenues, 508.2 Carrier's carrier facilities revenues, and 508.3 Special access revenues.

3. Section 31.508:1 is added to read:

§ 31.508:1 End user revenues.

This subaccount shall contain the monthly flat rate charge assessed upon end users for each residential or business line as established by the Commission.

4. Section 31.508:2 is added to read:

§ 31.508:2 Carrier's carrier facilities revenues.

This subaccount shall consist of federally tariffed charges assessed to interexchange carriers for access to local exchange facilities. The charges shall include:

(a) Limited Pay Telephone;
(b) Carrier Common Line;
(c) Line Termination;
(d) Local Switching;
(e) Intercept;
(f) Information;
(g) Common Transport; and
(h) Dedicated Transport.

Note:—Carriers are required to maintain supporting documentation in such a manner as to be able to readily identify each element of the carrier's carrier facilities revenues.

5. Section 31.508:3 is added to read:

§ 31.508:3 Special access revenues.

This subaccount shall include all tariffed charges assessed for other than end user or carrier's carrier access charges referred to in §§ 31.508.1 and 31.508.2 of this section.

6. Section 31.509 is added to read:

§ 31.509 Intrastate access revenue.

This account shall include all state tariffed charges assessed by local exchange carriers upon interexchange carriers and end users for access to the local exchange network for intrastate telecommunications.

7. Section 31.527 is added to read:

§ 31.527 Interstate billing and collection revenue.

This account shall include revenues for federally tariffed charges by local exchange carriers to interexchange carriers or other exchange carriers for billing and/or collecting interstate and international revenues. The charges shall include the customer billing process, account collections, billing information services, account establishment and maintenance, and account investigation.

8. Section 31.528 is added to read:

§ 31.528 Intrastate billing and collection revenue.

This account shall include revenues for state tariffed charges by local exchange carriers to interexchange carriers or other exchange carriers for billing and/or collecting intrastate revenues. The charges shall include the customer billing process, account collections, billing information services, account establishment and maintenance, and account investigation.

9. Section 31.6–65 is amended to add the following accounts:

§ 31.6–65 Operating expense accounts to be maintained.

* * * * *

Commercial Expenses

646 Interstate billing and collection expenses.
647 Intrastate billing and collection expenses.

Access Expenses

657 Interstate carrier's carrier expenses.
658 Intrastate carrier's carrier expenses.

* * * * *

10. Section 31.646 is added to read:

§ 31.646 Interstate billing and collection expenses.

This account shall include the expenses incurred by interexchange carriers or other exchange carriers for another local exchange carrier billing and collection services related to interstate domestic and international telecommunications services.

11. Section 31.647 is added to read:

§ 31.647 Intrastate billing and collection expenses.

This account shall include the expenses incurred by interexchange carriers or other exchange carriers for another local exchange carrier billing and collection services related to intrastate telecommunications services.

12. Section 31.657 is added to read:

§ 31.657 Interstate carrier's carrier expenses.

This account shall include the federally tariffed access expenses incurred by the interexchange carriers for access to the local exchange carriers' facilities.

Note.—Carriers are required to maintain supporting documentation in such a manner as to be able to readily identify each tariffed element of this expense.

13. Section 31.658 is added to read:

§ 31.658 Intrastate carrier's carrier expenses.

This account shall include the state tariffed access expenses incurred by the interexchange carriers for access to the local exchange carrier's facilities.

Appendix B

In Part 43, Annual Report Form M is amended as set forth below:

34. OPERATING REVENUES (ACCOUNT 300)

[Annual report of year ended December 31, 19—]

Line No.	Particulars (a)	Amount for the year (b)	Increase over preceding year (c)	Interstate and foreign revenues included (d)
	Local Service Revenues			
1	500 Subscribers' station revenues:			
2	501 Public telephone revenues	$	$	$
3	503 Service stations			
	504 Local private line services:			
4	Voice Grade Services—Other Than Data			
5	Less Than Voice Grade Services			
6	Data Services			
7	Program transmission—Audio			
8	Program transmission—Television			
9	Other services			
10	Subtotal (account) 504			
11	506 Other local service revenues			
12	Total (lines 1, 2, 3, 10 and 11)			
	Access Revenues			
13	508 Interstate access revenues			
14	508.1 End user revenues			
15	508.2 Carriers' carrier facilities revenues			
16	508.3 Special access revenues			
17	509 Intrastate access revenues			
18	Total (lines 13 to 17, inclusive)			
	Toll Service Revenues			
19	510 Message tolls			
20	511 Wide area toll services			
	512 Toll private line services:			
21	Voice Grade Services—Other Than Data			
22	Less Than Voice Grade Services			
23	Data Services			
24	Program transmission—Audio			
25	Program transmission—Television			
26	Other services			
27	Subtotal (account 512)			
28	516 Other toll service revenues			
29	Total (lines 19, 20, 27 and 28)			
	Miscellaneous Revenues			
30	521 Telegraph commissions			
31	522 Earth station revenues			
32	523 Directory advertising and sales			
33	524 Rent revenues			
34	525 Revenues from general services and licenses			
35	526 Other operating revenues			
36	527 Interstate billing and collection revenues			
37	528 Intrastate billing and collection revenues			
38	Total (lines 30 to 37 inclusive)			
	Uncollectible Revenues			
39	530 Uncollectible operating revenues—Dr			
40	Total operating revenues (lines 12, 18, 29 and 38, less line 39)			

( ) Denotes reverse amount.

In column (d), those Bell telephone companies who are parties to the standard intra-Bell System Division of Revenues Contracts covering all interstate and foreign toll revenues shall report the revenues received under such contracts; other companies shall report their interstate and foreign revenues included on lines 13 through 23, inclusive. Each non-Bell company shall show in a note how amounts reported in column (d) were determined.

35. Operating Expenses

[Annual report of year ended December 31, 19—]

Line No.		Operating Expense Accounts (a)	Amount for the year (b)	Increase over preceding year (c)
		Maintenance Expenses		
1	602.1	Repairs of pole lines	$	$
2	602.2	Repairs of aerial cable		
3	602.3	Repairs of underground cable		
4	602.4	Repairs of buried cable		
5	602.5	Repairs of submarine cable		
6	602.6	Repairs of aerial wire		
7	602.7	Repairs of underground conduit		
8	602.8	Shop repairs and salvage adjustments		
9	602.	Subtotal—Repairs of outside plant		
10	603	Test desk work		
11	604	Repairs of central office equipment		
12	605	Repairs of station equipment		
13	606	Repairs of buildings and grounds		
14	607	Repairs of public telephone equipment		
15	610	Maintaining transmission power		
16	611	Employment stabilization		
17	612	Other maintenance expenses		
18		Total (lines 9 to 17, inclusive)		
		Depreciation and Amortization Expenses		
19	608	Depreciation (Sch. 14A)		
20	609	Extraordinary retirements		
21	613	Amortization of intangible property		
22	614	Amortization of telephone plant acquisition adjustment		
23		Total (lines 19 to 22, inclusive)		
		Traffic Expenses		
24	621	General traffic supervision		
25	622	Service inspection and customer instruction		
26	624	Operators' wages		
27	626	Rest and lunchrooms		
28	627	Operators' employment and training		
29	629	Central office stationary and printing		
30	630	Central office house service		
31	631	Miscellaneous central office expense		
32	632	Public telephone expenses		
33	633	Other traffic expenses		
34	634	Joint traffic expenses—Dr		
35	635	Joint traffic expenses—Cr		
36		Total (lines 24 to 35, inclusive)		
		Commercial Expenses		
37	640	General commercial administration		
38	642	Advertising (Sch. 40)		
39	643	Sales expense		
40	644	Connecting company relations		
41	645	Local commercial operations		
42	646	Interstate billing and collection expenses		
43	647	Intrastate billing and collection expenses		
44	648	Public telephone commissions		
45	649	Directory expenses		
46	650	Other commercial expenses		
47		Total (lines 37 to 46, inclusive)		
		Access Expenses		
48	657	Interstate carriers' carrier expenses		
49	658	Intrastate carriers' carrier expenses		
50		Total (lines 48 and 49)		
		General Office Salaries and Expenses		
51	661	Executive department		
52	662	Accounting department		
53	663	Treasury department		
54	664	Law department		
55	665	Other general office salaries and expenses		
56		Total (lines 51 to 55, inclusive)		
		Other Operating Expenses		
57	668	Insurance		
58	669	Accidents and damages		
59	671	Operating rents		
60	672	Relief and pensions (Sch. 60A)		
61	673	Telephone franchise requirements		
62	674	General services and licenses (Sch. 41)		
63	675	Other expenses		

35. OPERATING EXPENSES—Continued

[Annual report of year ended December 31, 19—]

Line No.	Operating Expense Accounts (a)	Amount for the year (b)	Increase over preceding year (c)
64	676 Telephone franchised requirements—Cr		
65	677 Expenses charged construction—Cr		
66	Total (lines 57 to 65, inclusive)		
67	Total operating expenses (lines 18, 23, 36, 47, 50, 56, and 66)		

Operating ratio (operating expenses divided by operating revenue)——%.
( ) Denotes reverse amount.

Appendix C

In Part 43, amend FCC Report 901 to reflect the prescribed accounts:

DATA TRANSMITTAL ORDER AND CODES

Card type	Card No.	Item field No.	(Account No. indicated in parentheses)
			Operating Revenues (Amounts for the reported month only)
A	1	1	Subscribers' station revenues (500).
A	1	2	Public telephone revenues (501).
A	1	3	Local private line and sundry revenues (503, 504, 506).
A	1	4	Interstate access revenues (508).
A	1	5	Intrastate access revenues (509).
A	2	1	Message tolls (510) (See instruction F on page 6).
A	2	2	Wide area toll services (511).
A	2	3	Toll private line and sundry revenues (512, 516).
A	2	4	Earth station revenues (522).
A	2	5	Directory advertising and sales (523).
A	3	1	Rent revenues (524).
A	3	2	Revenues from general services and licenses (525).
A	3	3	Sundry miscellaneous revenues (521, 526).
A	3	4	Interstate billing and collection revenues (527).
A	3	5	Intrastate billing and collection revenues (528).
A	4	1	Uncollectible operating revenues.
			Operating Expenses (Amounts for the reported month only)
B	1	1	Maintenance expenses (602:1–607, 610, 611, 612).
B	1	2	Depreciation (608).
B	1	3	Amortization of telephone plant acquisition adjustment (614).
B	1	4	Traffic expenses (621–635).
B	1	5	Commercial expenses less billing and collection (640–645, 648–650).
B	2	1	Interstate billing and collection expenses (646).
B	2	2	Intrastate billing and collection expenses (647).
B	2	3	Interstate carriers' carrier expenses (657).
B	2	4	Intrastate carriers' carrier expenses (658).
B	2	5	General office salaries and expenses (661–665).
B	3	1	Earth station expenses (670).
B	3	2	Operating rents (671).
B	3	3	Relief and pensions (672).
B	3	4	General services and licenses (674).
B	3	5	Other expenses (609, 613, 668, 669, 673, 675, 676, 677).

[FR Doc. 84–29030 Filed 11–5–84; 8:45 am]

BILLING CODE 6712–1–M

Proposed Rules

Federal Register
Vol. 49, No. 216
Tuesday, November 6, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Extension of Time for Filing of Comments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing of comments.

SUMMARY: This extension of time is necessary to allow interested persons additional time to prepare and file written comments on the proposed rulemaking to exempt from regulation shipments of lemons for the purposes of market development or market research.

DATE: The date by which written comments must be postmarked is extended to November 13, 1984.

ADDRESS: Interested persons may send written comments to the Hearing Clerk, Room 1077–South Building, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for inspection during business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, USDA, AMS, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: Notice was given of this proposed rulemaking in the **Federal Register** on October 15, 1984 (49 FR 40183). The notice provided an opportunity to file written comments thereto by November 5, 1984.

The time for the filing of written comments is hereby extended to November 13, 1984.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

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

Dated: November 1, 1984

Thomas R. Clark,

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

[FR Doc. 84–29166 Filed 11–5–84; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 984

Walnuts Grown in California; Proposed Free and Reserve Percentages for the 1984–85 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites written comments on the establishment of marketing percentages for California walnuts for the 1984–85 marketing year to allocate this season's supplies between domestic and export markets. the 1984–85 marketing year began August 1, 1984. The proposal is intended to make ample supplies of this season's walnuts available for domestic needs and all of the excess available for export. The percentages are authorized by the Federal marketing order for walnuts grown in California.

DATES: Comments must be received by November 21, 1984.

Proposed Effective Dates: August 1, 1984 through July 31, 1985.

ADDRESSES: Send two copies of comments to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 477–5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The authority to establish the free and reserve percentages under consideration is contained in § 984.49 of the marketing agreement and Order No. 984, both as amended (7 CFR Part 984), regulating the handling of walnuts grown in California and hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was unanimously recommended by the Walnut Marketing Board, hereinafter referred to as the "Board," which works with USDA in administering the order.

Pursuant to § 984.48 of the order, the Board based its recommendation for free and reserve percentages of 76 percent and 24 percent, respectively, on estimates of supply and combined inshell and shelled domestic trade demand for the current marketing year. Estimated trade demand was adjusted to account for supplies of certified walnuts carried in from the 1983–84 marketing year and for supplies deemed desirable to be carried out on July 31, 1985, for early season domestic use next marketing year until the 1985 crop is available for market.

The estimated 1984 walnut production is well in excess of the 1984–85 marketing year domestic needs. While the proposal is designed to tailor the supply to domestic demand, it would still ensure the availability of ample supplies of walnuts for domestic markets during that year and promote maximum usage.

Supplies in excess of domestic needs would be available chiefly for export. Handlers may also obtain reserve disposition credit for disposing of substandard walnuts in oil, feed, or other outlets the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts.

The Board used the estimates given in the table below in making its recommendation for the 1984–85 marketing year. Weight figures for inshell walnuts are converted to their equivalent shelled kernel weights.

	Inshell weight (1,000 lbs.)	Conversion factor (percent)	Kernel weight (1,000 lbs.)
Supply			
1. Orchard-run production	450,000		

	Inshell weight (1,000 lbs.)	Conversion factor (percent)	Kernel weight (1,000 lbs.)
2. Less: miscellaneous farm use	2,000		
3. Commercial production	448,000	40	179,200
4. Plus:			
Uncertified carryin inshell	482	45	217
Uncertified carryin shelled			30,521
5. Total merchantable supply			209,938
6. Plus: substandard creditable for reserve			8,000
7. Total supply subject to regulation			217,938
Demand			
8. Inshell demand	65,000		
9. Plus: desirable carryout	15,000		
10. Less: certified carryin	6,542		
11. Adjusted inshell demand	73,458	45	33,056
12. Shelled demand			120,000
13. Plus: desirable carryout			35,000
14. Less: certified carryin			23,356
15. Adjusted shelled demand			131,644
16. Total demand (item 11+item 15)			164,700
Marketing Percentages			
17. Free percentage (item 16÷item 7×100); 76% (75.6% rounded up by the Board)			
18. Reserve percentage (100% – item 17); 24% (24% rounded down by the Board).			

List of Subjects in 7 CFR Part 984

Marketing agreements and orders, Walnuts, California.

PART 984—[AMENDED]

Therefore, it is proposed to add § 984.230 to 7 CFR Part 984 as follows:

(This section will not appear in the Code of Federal Regulations)

§ 984.230 Free and reserve percentages for California walnuts during the 1984–85 marketing year.

The free and reserve percentages for California walnuts during the marketing year beginning August 1, 1984, shall be 76 percent and 24 percent, respectively.

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

Dated: November 1, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84–29167 Filed 11–5–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–147–84]

Treatment of Certain Losses on Straddles Entered Into Before Effective Date of Economic Recovery Tax Act of 1981; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the treatment of certain losses on straddles entered into before the effective date of the Economic Recovery Tax Act of 1981.

DATES: The public hearing will be held on Thursday, November 29, 1984, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, November 15, 1984.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR–147–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under Treasury Regulations § 1.165–13. The proposed regulations appeared in the **Federal Register** for Thursday, August 23, 1984 (49 FR 33458).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Thursday, November 15, 1984, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 29187 Filed 11–5–84; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 41 and 48

[LR–31–83]

Heavy Vehicle Use Tax; Credits and Refunds of the Tax on Diesel Fuel

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the imposition of tax on the use of heavy vehicles and relating to credits and refunds of the tax imposed on the sale of diesel fuel. Changes to the applicable tax law regarding heavy vehicles were made by the Highway Revenue Act of 1982 and the Tax Reform Act of 1984. Changes to the applicable law regarding diesel fuel were made by the Tax Reform Act of 1984. The regulations would affect owners of highway motor vehicles and users of diesel fuel and provide them with the guidance needed to comply with those Acts.

DATES: Written comments and requests to speak at the public hearing must be delivered or mailed by December 6, 1984. Except as otherwise provided in this document, the amendments are proposed to be effective after June 30, 1984.

ADDRESS: Send comments and requests to speak at the public hearing to: Commissioner of Internal Revenue, 1111 Constitution Avenue, NW., Attention: CC: LR:T (LR–31–83) Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: William A. Jackson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T LR–31–83, (202–566–4336), not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Excise Tax Regulations (26 CFR Part 41) under sections 4481, 4482, and 4483 of the Internal Revenue Code of 1954 (Code). These amendments are proposed to conform the regulations to section 513 of the Highway Revenue Act of 1982 (Title

V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97–424, 96 Stat. 2177) and sections 901, 902, and 903 of the Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984) (Pub. L. 98-369, 98 Stat. 1003) and are to be issued under the authority contained in sections 4482(b) (70 Stat. 390, 26 U.S.C. 4482(b)), 4483(d) (96 Stat. 2178, 26 U.S.C. 4483(d)), and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Code. This document also contains proposed amendments to the Excise Tax Regulations (26 CFR Part 48) under section 6427(b)(2) of the Code relating to an exemption from the tax imposed by section 4041 of the Code in the case of fuel used in certain buses, and under section 6427(g) of the Code relating to a credit or refund to original purchasers of diesel-powered automobiles and light trucks. These last two amendments are proposed to conform the regulations to sections 911(b), and 915 of the Tax Reform Act of 1984, respectively.

Heavy Vehicle Use Tax

Prior to enactment of the Highway Revenue Act of 1982 ("Highway Revenue Act") and the Tax Reform Act of 1984 ("Tax Reform Act"), an excise tax was imposed on the use on the public highways of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as the vehicle) had a taxable gross weight in excess of 26,000 pounds, at a rate of $3.00 per year for each 1,000 pounds of taxable gross weight or fraction thereof. Use tax schedules set forth in § 41.4482(b)–1 were used to determine the taxable gross weight for highway motor vehicles.

Section 901 of the Tax Reform Act provides, effective for taxable periods beginning on or after July 1, 1984, that the heavy vehicle use tax is imposed only on highway motor vehicles which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) have a taxable gross weight of at least 55,000 pounds. The use tax schedules were revised in § 41.4482(b)–1T of the temporary regulations published in the August 31, 1984 issue of the **Federal Register** (49 FR 34468) as T.D. 7970, effective only for the taxable period beginning July 1, 1984, and ending June 30, 1985. The schedules were revised to reflect the increased threshold for incurring tax liability and to provide a new category for tractor-trailer-trailer combinations.

Under the proposed regulations, instead of using a use tax schedule to determine taxable gross weight, a vehicle's taxable gross weight for purposes of the Federal heavy vehicle use tax would be based on the highest weight at which the vehicle is registered (including registration under a prorate agreement), or required to be registered in any State at any time during the taxable period. For vehicles that are registered (including registration under a prorate agreement), or required to be registered only in states that base their registered weight on unladen weight, the taxpayer will declare the taxable gross weight of the vehicle and certify the accuracy of that weight to the Internal Revenue Service. The proposed regulations also provide a formula to determine additional tax in the case of an increase in a vehicle's taxable gross weight during the taxable period.

In addition, an exemption from the tax is provided for vehicles that will not be used for more than 5,000 miles on public highways during any taxable period. This exemption applies to agricultural vehicles that will not be used more than 7,500 miles on the public highways during any taxable period. In contrast to the use tax prior to the Highway Revenue Act, which allowed no refunds or credits, the proposed regulations permit a prorated refund of the tax for a stolen or destroyed vehicle. A vehicle is considered destroyed if it is damaged to such an extent that it is uneconomical to rebuild. Further, section 902 of the Tax Reform Act provides a 25 percent reduction of the tax imposed by section 4481 in the case of certain trucks used in logging.

Finally, section 143(a) of the Highway Revenue Act amended 23 U.S.C. 141(d) to provide that if a State registers highway motor vehicles without being presented proof of payment of the Federal highway use tax, funds apportioned to that State under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent for that fiscal year. Accordingly, under the proposed regulations, a new § 41.6001–2 is added relating to proof of payment for state registration purposes. The proposed regulations provide generally that a State which registers a highway motor vehicle which is subject to tax under section 4481(a) must, at the time of such registration, be presented proof of payment of the heavy vehicle use tax for the taxable period which includes the date of registration. Proof of payment shall generally consist of the Schedule 1 (Form 2290) that has been receipted by the Internal Revenue Service and returned to the taxpayer. Except in the case in which vehicle identification numbers are not required to be listed, a Schedule 1 presented as proof of payment on or after September 1, 1985, shall only serve as proof of payment for a vehicle whose vehicle identification number appears on the Schedule 1 (or attached page) and which is being registered at a weight equal to or less than the taxable gross weight listed on the Schedule 1 for such vehicle. A State may register a vehicle without being presented proof of payment if the person registering the vehicle presents a bill of sale indicating that the vehicle was purchased by such person no more than 60 days prior to the date on which the state receives the application for registration of such vehicle. Further, although proof of payment is required for vehicle registration in a "base state", a State may issue a "prorate license" for a vehicle under the International Registration Plan (or similar agreement) without being presented proof of payment of the Federal heavy vehicle use tax.

The proposed regulations further provide that a State may register a vehicle without being presented proof of payment if the State receives a written declaration that such vehicle has a taxable gross weight of less than 55,000 pounds during the taxable period. This requirement that a written declaration be presented to the State when registering a vehicle with a taxable gross weight of less than 55,000 pounds applies to applications for registration received by any State on or after January 1, 1985 and before July 1, 1985. On or after July 1, 1985, the declaration requirement applies only to states that register highway motor vehicles on the basis of unladen weight and that receive applications for registration on or after such date.

The provisions relating to the proof of payment requirements are proposed to be effective for vehicles for which applications for registration are received by States on and after January 1, 1985. However, consideration will be given to implementing at a future time an alternative method for States to verify proof of payment of the use tax.

Diesel Fuel Differential

This document contains proposed amendments to the regulations relating to the diesel fuel differential amount payable in the form of an income tax credit or an excise tax refund to original purchasers of qualified diesel-powered vehicles. Section 911 of the Tax Reform Act, in addition to increasing the tax on diesel fuel from 9 cents a gallon to 15 cents a gallon for fuel sold or used on or after August 1, 1984, provides for the advance repayment of this increased tax

(the diesel fuel differential amount) to original purchasers of qualified diesel-powered highway vehicles.

A "qualified diesel-powered highway vehicle" is any diesel-powered highway vehicle that has at least 4 wheels, has a gross vehicle weight rating of 10,000 pounds or less, and is registered for highway use in the United States under the laws of any State. An "original purchaser" is generally the first person to purchase a qualified diesel-powered highway vehicle after January 1, 1985, and before January 1, 1988, for use other than resale. In addition, a person who holds a qualified diesel-powered highway vehicle on January 1, 1985, for use other than resale, will be treated as an original purchaser, entitled to advance repayment of the diesel fuel differential amount or a fraction thereof.

The diesel fuel differential amount payable to an original purchaser of a qualified diesel-powered highway vehicle is $102, except such amount is $198 in the case of a truck or van. The fraction of the diesel fuel differential amount which is payable to a holder on January 1, 1985, of a qualified diesel-powered highway vehicle is determined by the model year of the vehicle. No amount is payable to a holder of a vehicle with a model year of 1978 or earlier. The basis of a qualified diesel-powered highway vehicle is, for purposes of subtitle A of the Code, reduced by the diesel fuel differential amount (or applicable fraction thereof).

Tax on Diesel Fuel Used in Certain Buses

This document also contains proposed amendments to the regulations relating to the refund of all or a portion of the excise tax on fuel upon which tax is imposed under section 4041 which is used in certain intercity, local and school buses. Section 915 of the Tax Reform Act provides for a maximum refund of 12 cents a gallon with respect to tax paid on fuel used in intercity, local and school buses unless the fuel is used in a qualified local bus, in which case a full 15 cents a gallon refund of tax paid on such fuel is allowable. A "qualified local bus" is a bus that is engaged in furnishing intracity passenger land transportation and has a seating capacity of at least 20 adults (not including the driver). Such transportation must be available to the general public and be along regular scheduled routes. Further, the bus must either be under contract with a State or local government or be receiving more than a nominal subsidy from a State or local government.

Comments; Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for inspection and copying. Notice of a public hearing appears in the proposed rules section of this issue of the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

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

List of Subjects

26 CFR Part 41

Excise taxes, Motor vehicles.

26 CFR Part 48

Agriculture, Arms and ammunition, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 41 and 48 are as follows:

PART 41—[AMENDED]

Paragraph 1. Section 41.4481–1 is revised to read as set forth below:

§ 41.4481–1 Imposition of tax.

(a) *In general.* A tax is imposed under section 4481(a) of the Code for each taxable period beginning after June 30, 1984, on the first use on the public highways in the United States during such period of any highway motor vehicle that (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds, at the rate specified in paragraph (b) of this section. The tax is imposed on the use of such a highway motor vehicle only if, at the time of the use of such vehicle, it is registered or required to be registered in the name of a person (whether or not such person is the person who uses the vehicle). In addition, the tax is imposed on any Canadian highway motor vehicle that is registered in a Canadian province and has a "prorate license" under the International Registration Plan or the Uniform Registration Proration and Reciprocity Agreement to satisfy the regustration laws of certain of the United States. See, however, §§ 41.4483–1, 41.4483–2, and 41.4483–3 relating, respectively, to exemptions from the tax in the case of highway motor vehicles used by a state or any political subdivision thereof, certain transit-type buses, and vehicles used for 5,000 or fewer miles (7,500 or fewer miles in the case of agricultural vehicles) on public highways. See § 41.4483–6 relating to reduction in tax in the case of certain trucks used in logging. For definitions of the terms "registered", "highway motor vehicle", "taxable gross weight", "taxable period", "use", and "customary use", see §§ 41.4481–4, 41.4482(a)–1, 41.4482(b)–1, and paragraphs (b), (c), and (d) of § 41.4482(c)–1 respectively.

(b) *Rate of tax.* (1) For taxable periods after June 30, 1956, and before July 1, 1984, the tax is computed on each 1,000 pounds of taxable gross weight or fraction thereof for each highway motor vehicle the use of which at any time during the taxable period is subject to the tax. Thus, any fraction of 1,000 pounds of taxable gross weight is treated as 1,000 pounds for purposes of

the computation of the tax. Following are the rates of tax in effect for taxable periods after June 30, 1956, and before July 1, 1984:

Period of vehicle use	Rate of tax per 1,000 pounds or fraction thereof of taxable gross weight
For each taxable year period commencing after June 30, 1956, and ending before July 1, 1961	$1.50
For each taxable year period commencing after June 30, 1961, and ending before July 1, 1984	3.00

(2) For taxable periods after June 30, 1984, the tax is computed on each 1,000 pounds of taxable gross weight or fraction thereof of each highway motor vehicle the use of which at any time during the taxable period is subject to the tax as set forth in paragraph (a)(1) of this section. Thus, any fraction of 1,000 pounds of taxable gross weight in excess of 55,000 pounds of taxable gross weight is treated as 1,000 pounds for purposes of the computation of the tax. Following are the rates of tax in effect for taxable periods after June 30, 1984:

Taxable gross weight	Rate of tax
At least 55,000 pounds but not over 75,000 pounds.	$100 per taxable period plus $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds.
Over 75,000 pounds	$550.

For the taxable period beginning July 1, 1988, and ending September 30, 1988, the annual rate of tax shall be determined by substituting "$25" for "$100", "$5.50" for "$22", and "$137.50" for "$550", in the table in this paragraph (b)(2). However, if the tax imposed by section 4481(a) is extended to apply to use after September 30, 1988, the rate of tax for taxable periods after June 30, 1988, shall be as provided in section 4481(a).

(c) *Computation of tax.* (1) Except as provided in paragraph (c)(2) of this section, the tax on the use of a particular highway motor vehicle for taxable period beginning after June 30, 1984, is computed as follows:

(i) For vehicles with a taxable gross weight of at least 55,000 pounds, but not over 75,000 pounds, add to $100 an amount equal to $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds; and

(ii) For vehicles with a taxable gross weight over 75,000 pounds, the tax is $550.

(2) If the first taxable use of a particular highway motor vehicle is made after the first month of the taxable period, the tax on the use of such vehicle for such taxable period is computed by multiplying the amount of tax that would be due for a full taxable period as computed under paragraph (c)(1) of this section, by a fraction. Such fraction shall have as its numerator the number of months in the taxable period beginning with the month of first taxable use and as its denominator the number of months in the entire taxable period. For purposes of determining the fraction, any part of a month is counted as a full month. (See example (2) of paragraph (e) of this section.)

(3) If a Form 2290 has been filed for a taxable period for a highway motor vehicle based on a particular taxable gross weight, and such taxable gross weight is increased during the same taxable period, then the taxpayer shall file a new Form 2290 and pay (either in full or by installments) any additional tax imposed as a result of the increased taxable gross weight. Such additional tax shall be equal to the amount calculated according to the following formula:

$$\left[\left(T_1 \times \frac{P}{12}\right)+\left(T_2 \times \frac{R}{12}\right)\right]-T_1,$$

where:

T_1 = Tax imposed for a full taxable period (or partial taxable period as determined under paragraph (c)(2) of this section) at the vehicle's previously reported taxable gross weight.

T_2 = Tax imposed for the same taxable period as used in T_1 at the vehicle's increased taxable gross weight.

P = The number of months in the taxable period during which the vehicle's taxable gross weight was as previously reported for such taxable period. This number does not include the month in which the vehicle's taxable gross weight increased.

R = The number of months remaining in the taxable period including the month in which the vehicle's taxable gross weight was increased.

If tax was imposed for a partial taxable period as determined under paragraph (c)(2) of this section, the additional tax is determined by substituting the number of months in such partial taxable period for "12" in the above formula.

(4) If in any taxable period the taxable gross weight of a highway motor vehicle is decreased, the computation of tax is not affected and no right to refund of any tax paid under section 4481 arises.

(5) If in any taxable period a highway motor vehicle is destroyed or stolen before the first day of the last month in the taxable period, and is not subsequently used during such taxable period, the tax shall be calculated proportionately from the first day of the month in the period in which the first taxable use of the highway motor vehicle occurs to and including the last day of the month in which the highway motor vehicle was destroyed or stolen. Any tax paid under section 4481(a) on such a highway motor vehicle in excess of the tax calculated in the preceding sentence, shall be an overpayment for which a refund of tax may be claimed. For purposes of this paragraph (c)(3), a highway motor vehicle is destroyed if the vehicle is damaged due to an accident or other casualty to such an extent that it is not economical to rebuild.

(6) If the use of a highway motor vehicle during the taxable period is discontinued (for reasons other than destruction or theft as described in paragraph (c)(3) of this section) or is converted to a use which is exempt from the tax imposed by section 4481(a), the computation of the tax is not affected and no right to refund of any tax paid under section 4481 arises.

(d) *Refund of tax under section 4481(a).* Any claim for refund of an overpayment of tax under section 4481(a) due to destruction or theft of the vehicle shall be made in accordance with the applicable provisions of this section and § 301.6402–2 (Regulations on Procedure and Administration) and shall be filed by the person in whose name the vehicle is registered or required to be registered when the vehicle is destroyed or stolen. A claim for refund of the tax imposed by section 4481(a) is to be filed on Form 843 (Claim).

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). In the taxable period beginning July 1, 1984, the first taxable use of a particular highway motor vehicle, a bus, having a taxable gross weight of 56,000 pounds, occurs on July 10, 1984, at which time the vehicle is registered in the name of X. A tax of $122 ($100+22) is imposed on X for the use of such vehicle for such taxable period.

Example (2). On July 1, 1984, X has registered in his name a highway motor vehicle having a taxable gross weight of 60,000 pounds. The vehicle is in "dead storage" until August 10, 1984, at which time X starts using the vehicle on the public highways in carrying on his trucking business. On August 10, 1984, the vehicle is

still registered in X's name. Since the first taxable use of this highway motor vehicle during the taxable period occurred on August 10, 1984, X is required to pay a tax of $192.50 ([$100+(5×$22)]×11/12) for such taxable period.

Example (3). On April 15, 1985, a vehicle with a taxable gross weight of 70,000 pounds and registered in the name of Y is completely destroyed. Y had purchased the vehicle from X who had paid the tax for the taxable period beginning July 1, 1984. Y is entitled to a refund of tax for those full months after destruction in the taxable period ending June 30, 1985. Thus, Y may file a claim for a refund of $71.67—2/12 of the total tax of $430 ($100+(15×$22)).

Par. 2. Section 41.4481–2 is amended as follows:

(a) Paragraph (a)(2) and the example contained therein are revised to read as set forth below.

(b) The material following the first sentence of paragraph (b) is revised to read as set forth below.

§ 41.4481–2 Persons liable for tax.

(a) * * *

(2) The application of paragraph (a)(1) of this section may be illustrated by the following example:

Example. In the taxable period beginning July 1, 1985, the first taxable use of a particular highway motor vehicle having a taxable gross weight of 60,000 pounds occurs on July 10, 1985, at which time the vehicle is registered in the name of Y. On September 1, 1984, Y sells the vehicle to X who registers and uses the vehicle before the end of such taxable period. Since the vehicle was registered in the name of Y at the time of its first taxable use, Y is liable for the total tax of $210 ($100+(5×$22)) imposed on the use of the vehicle for the taxable period. X is also liable for $210 tax or any part thereof, but only to the extent that Y does not pay it. To the extent that either X or Y pays the tax the other party is relieved of such liability.

(b) * * * Such person shall also obtain and keep as evidence a statement from the transferor as to whether there was in effect, at the time the vehicle was acquired, a suspension under § 41.4483–3(a) of the tax imposed by section 4481(a). The evidence may take the form of a written statement, signed and dated by the person from whom the vehicle was acquired, showing whether there was or was not a prior taxable use of the vehicle and whether there was a suspension of tax in the taxable period. If the vehicle is acquired from a dealer in highway motor vehicles, the statement may be obtained from such dealer or from the person from whom the dealer acquired such vehicle. If evidence is not obtained showing whether there was or was not a prior taxable use of such vehicle and whether there was a suspension of tax in the taxable period, such person shall keep as a part of his records a written statement of the reason why he was unable to obtain such evidence.

* * * * *

Par. 3. Section 41.4482 (b)–1 is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (d) is amended by revising the heading to read as set forth below and by substituting "after June 30, 1969, and before July 1, 1984" for "beginning on or after July 1, 1969", at the end of the first sentence.

(c) New paragraphs (e) and (f) are added to read as set forth below.

§ 41.4482(b)–1. Definition of taxable gross weight.

(a) *In general.* The tax imposed on the use of a highway motor vehicle (of a taxable gross weight of at least 55,000 pounds) is based on the taxable gross weight of such highway motor vehicle. Taxable gross weight of a highway motor vehicle is determined with reference to the sum of (1) the actual unloaded weight of such highway motor vehicle (fully equipped for service); (2) the actual unloaded weight of any trailers or semitrailers (fully equipped for service) customarily used in combination with such highway motor vehicle; and (3) the weight of the maximum load customarily carried on such highway motor vehicle and on any trailers or semitrailers customarily used in combination with such highway motor vehicle. In order to determine the taxable gross weight of a particular vehicle for a particular taxable period, use the appropriate method described in either paragraphs (c), (d), or (e) of this section, or § 41.4482(b)–1T.

* * * * *

(d) *Scheduling of taxable gross weights for taxable periods beginning after June 30, 1969, and ending before July 1, 1984.* * * *

(e) *Determination of taxable gross weight for taxable periods after June 30, 1985.* (1) For purposes of the tax imposed by section 4481(a), the taxable gross weight of a highway motor vehicle shall be, in the case of a single unit truck, the highest gross weight at which such vehicle is registered (including registration under a prorate agreement), or required to be registered in any State at any time during the taxable period. In the case of a tractor-trailer or truck-trailer combination, the taxable gross weight of such vehicle shall be in the highest combined gross weight at which such vehicle is registered (including registration under a prorate agreement), or required to be registered in any State at any time during the taxable period. Special temporary travel permits which allow a vehicle to, (i) operate in a State in which the vehicle is not registered or prorated, (ii) operate at more than a State's maximum statutory weight limit, or (iii) operate at more than the weight that the vehicle is registered in a State, shall not be considered in determining the highest registered weight of a vehicle.

(2) If a highway motor vehicle is registered (including registration under a prorate agreement), or required to be registered only in a State (or States) that requires registration on the basis of the unladen weight of the vehicle, the taxpayer shall declare the taxable gross weight of the vehicle based on its gross operating weight which is the sum of the weights referred to in paragraph (a) of this section and pay the tax imposed by section 4481(a) accordingly. In addition, the taxpayer shall complete and submit to the Internal Revenue Service with the first Form 2290 (Federal Heavy Vehicle Use Tax Return) filed during the taxable period, a certificate that is substantially similar to the following certificate:

Certificate

[For use by a person who is liable for tax under section 4481(a) on a highway motor vehicle that is registered (including registration under a prorate agreement), or required to be registered only in a State or States that require registration based on unladen weight]

—, 19——

(DATE)

I, the undersigned, certify that the taxable gross weight which I have declared for vehicle numbers _____ (vehicle identification numbers) for the taxable period beginning on _____, is the maximum gross operating weight of this vehicle within the meaning of § 41.4482(b)–1.

The undersigned understands that fraudulent use of this certificate for the purposes of underpayment of the Federal heavy vehicle use tax will subject the undersigned or any other party making such fraudulent use to criminal penalties which may include fines and/or imprisonment together with the costs of prosecution. The undersigned also understands that he/she must be prepared to establish by satisfactory evidence the taxable gross weight of the vehicle.

_____

(Signature)

_____

(Address)

_____

(Taxpayer identification number)

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A is the owner of a truck-tractor. On January 1, 1985, A registers the truck-tractor for calendar year 1985 in three states—X, Y, and Z. The truck-tractor is registered in State X at a weight of 60,000 pounds. The unit is also prorated in State Y at a weight of 65,000 pounds. Finally, A registers the truck-tractor in State Z. Registration of vehicles in State Z is based on the unladen weight of the vehicle. The registered weights of the truck-tractor in States X and Y are not based on unladen weight. During the taxable period beginning July 1, 1985, A's truck-tractor is not registered in any other state. For the taxable period beginning July 1, 1985, the taxable gross weight of A's truck-tractor for purposes of the Federal heavy vehicle use tax is 65,000 pounds because this is the highest weight at which the truck-tractor is registered in any State during the taxable period.

Example (2). Assume the same facts as in example (1), except that on one occasion during the taxable period, A was issued a special 2-day permit to use his truck-tractor in State Y to haul a load which would give A's unit a total gross weight of 80,000 pounds. The taxable gross weight of A's unit is 65,000 pounds because special permits to haul heavier loads on a temporary basis are not considered in determining the highest registered weight of a vehicle.

Example (3). C owns and has registered in his name 2 trucks which are identical in all respects and which are used to carry the same type of load. The first vehicle is registered only in State X at a registered weight of 70,000 pounds. The second vehicle is registered only in State Y at a registered weight of 65,000 pounds. Neither State X or State Y register vehicles on the basis of unladen weight. For purposes of the Federal heavy vehicle use tax, the taxable gross weight of the vehicles registered in State X is 70,000 pounds and the taxable gross weight of the vehicle registered in State Y is 65,000 pounds even though the vehicles are identical.

Par. 4. Section 41.4482(c)–1 is amended by substituting "1988" for "1979" every place it appears in paragraph (b) and by adding a new paragraph (d) immediately after paragraph (c) to read as set forth below:

§ 41.4482(c)–1 Definition of State, taxable period, use and customary use.

* * * * *

(d) *Customary use.* For taxable periods beginning after June 30, 1984, the term "customary use" as used in the regulations in this part, means that a semitrailer or trailer shall be treated as customarily used in connection with a highway motor vehicle if the vehicle is equipped to tow such semitrailer or trailer.

Par. 5. Examples (1), (2), and (3) of § 41.4483–2(f) are amended by substituting "1984" for "1962" wherever it appears, by substituting "1985" for "1963" wherever it appears, by substituting the phrase "at least 55,000 pounds" for "more than 26,000 pounds" wherever it appears, and by substituting the phrase "less than 55,000 pounds" for "26,000 pounds or less" wherever it appears.

Par. 6. Section 41.4483–3 is redesignated as § 41.4483–4 and a new § 41.4483–3 is inserted immediately after § 41.4483–2 to read as set forth below:

§ 41.4483–3 Exemption for trucks used for 5,000 or fewer miles and agricultural vehicles used for 7,500 or fewer miles on public highways.

(a) *Suspension of tax.*—(1) *In general.* Liability for the tax imposed by section 4481(a) is suspended during a taxable period if it is reasonable to expect that the vehicle will be used for 5,000 or fewer miles on public highways during such taxable period and the owner furnishes in the time and manner required the information required under paragraph (a)(2) of this section. See paragraph (g) of this section regarding special rules for agricultural vehicles. See § 41.4482(c)–1(c) for the meaning of "use" on the public highways.

(2) *Information to be supplied in support of suspension of tax.* The owner of a highway motor vehicle who reasonably expects that the vehicle will be used for 5,000 or fewer miles on public highways during a taxable period shall furnish on the first Form 2290 (Federal Heavy Vehicle Use Tax Return) filed during the taxable period for such motor vehicle, such information as is required by the Form in order to support the suspension of tax under paragraph (a) of this section.

(b) *Cessation of suspension from tax.* If a highway motor vehicle on which the tax under section 4481 (a) is suspended for a particular taxable period under paragraph (a)(1) of this section is used for more than 5,000 miles on public highways during such taxable period, the owner of the vehicle shall pay the tax for the entire taxable period in accordance with section 4481(a). The tax shall be reported on a Form 2290, which must be filed on or before the last day of the month immediately following the month in which the use of the vehicle during the taxable period exceeds 5,000 miles. If such Form is filed within the time required by the preceding sentence, it shall be treated as timely filed.

(c) *Exemption.* If at the end of any taxable period during which the tax under section 4481(a) on a highway motor vehicle was suspended under paragraph (a)(1) of this section the vehicle has not been used for more than 5,000 miles on public highways, the vehicle shall be exempt from the tax for that taxable period. The owner of the vehicle shall verify that the vehicle was used for less than 5,000 miles in such ended taxable period on the first Form 2290 filed for the next taxable period.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A is the owner of 6 highway motor vehicles, each of which has a taxable gross weight in excess of 55,000 pounds. None of these 6 vehicles are agricultural vehicles. The vehicles are placed in use during July 1984. Because of the nature of his business, A reports on the first Form 2290 filed after June 30, 1984, that he reasonably expects that none of the vehicles will be used for more than 5,000 miles on public highways. Accordingly, the tax imposed by section 4481(a) is suspended for A's 6 vehicles for the taxable period July 1, 1984, through June 30, 1985.

Example (2). Assume the same facts as in example (1) except that during the month of February 1985, the use of one of A's vehicles exceeds 5,000 miles on public highways. A is liable for the full tax for the taxable period July 1, 1984, through June 30, 1985, for that vehicle at the rate set forth in §41.4481–1(b), and must so report on Form 2290 filed on or before March 31, 1985, the last day of the month following the month in which the use exceeds 5,000 miles.

(e) *Refund of tax for highway motor vehicle used 5,000 or fewer miles.* If a highway motor vehicle on which the tax imposed by section 4481(a) has been paid for a given taxable period is used for 5,000 or fewer miles on public highways during such taxable period, the person who paid the tax may file a claim for refund of an overpayment of the tax at the end of the taxable period. Claims for refunds of tax made under this paragraph (e) shall be filed in the same manner as claims for refunds filed under § 41.4481–1(d). Refunds of tax made under this paragraph (e) shall be without interest.

(f) *Relief from liability for tax under certain circumstances.* If the tax imposed by section 4481(a) on a highway motor vehicle is suspended for any taxable period under paragraph (a) of this section and the vehicle is transferred while the suspension is in effect, the transferor will not be liable for any tax on such vehicle for such taxable period if such transferor furnishes a statement to the transferee on which is included the transferor's name, address and taxpayer identification number, the vehicle identification number, the date of transfer of the vehicle, the number of miles the vehicle has been used on the public highways during the taxable period, the odometer reading at the time of the transfer, and the name, address and taxpayer identification number of the transferee. The statement required in the preceding sentence shall be attached

by the transferee to a Form 2290 which must be filed on or before the last day of the month following the month in which such vehicle is transferred. The suspension from tax under paragraph (a) continues until the vehicle is used on the public highways for more than 5,000 miles during the taxable period (including use by the transferor for the portion of the taxable period prior to the transfer). If the transferor has furnished the statement required in this paragraph (f), the transferee and not the transferor is liable for the entire tax under section 4481(a) for the taxable period in which the transfer was made. If the transferor has not furnished such statement to the transferee, then the transferor is also liable for the tax on the use of such vehicle for such taxable period to the extent that the tax or an installment payment of the tax has not been previously paid. See paragraph (b) of this section relating to cessation of suspension from tax.

(g) *Special rule for agricultural vehicles*—(1) *In General.* In applying the provisions of this section to an agricultural vehicle, "7,500" shall be substituted for "5,000" each place it appears in paragraphs (a) through (f) of this section.

(2) *Meaning of terms*—(i) *Agriculture vehicle.* An agricultural vehicle is any highway motor vehicle—

(A) Used (or expected to be used) primarily for farming purposes, and

(B) Registered (under the laws of the State or States in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes.

A highway motor vehicle is used primarily for farming purposes if more than one-half of such vehicle's use (determined on the basis of mileage) during the taxable period is for farming purposes. Further, the highway motor vehicle must be registered (under the laws of the State or States where such vehicle is required to be registered) as a highway motor vehicle used for farming purposes for the entire taxable period in order to qualify as an agricultural vehicle. See § 41.4482(a)-(1) for the definition of "highway motor vehicle".

(ii) *Farming purposes.* For purposes of this section, "farming purposes" means the transporting of any farm commodity to or from a farm, or the use directly in agricultural production.

(iii) *Farm commodity.* A "farm commodity" is any agricultural or horticultural commodity, feed, seed, fertilizer, livestock, bees, poultry, fur-bearing animals, or wildlife. A farm commodity does not include a commodity which has been changed by a processing operation from its raw or natural state. For example, juice which has been extracted from fruits or vegetables is not a farm commodity for purposes of this paragraph (g).

(iv) *Farm.* The term "farm" includes stock (including feed yards for fattening cattle), dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of any agricultural or horticultural commodity. Greenhouses and other similar structures used primarily for purposes other than the raising of agricultural or horticultural commodities (for example, display, storage, or fabrication of wreaths, corsages, and bouquets) do not constitute "farms".

(v) *Agricultural production*—(A) *In general.* A highway motor vehicle is considered to be used directly in agricultural production only if it is used as indicated in the following paragraphs.

(B) *Use of a highway motor vehicle in connection with cultivating, raising, and harvesting.* A highway motor vehicle is considered to be used directly in agricultural production if such vehicle is used in connection with cultivating the soil, or raising or harvesting any agricultural or horticultural commodity, including the raisng, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife. A highway motor vehicle which is used in connection with operations such as canning, freezing, packaging, or other processing operations will not be considered to be used directly in agricultural production.

(C) *Use of a highway motor vehicle in connection with planting, cultivation, caring for, cutting, etc., of trees.* A highway motor vehicle is used directly for agricultural production if it is used in connection with planting, cultivating, caring for, or cutting of trees, or in connection with the preparation (other than milling) of trees for market; but only if such operations are incidental to farming operations. These farming operations include felling trees and cutting them into logs or firewood, but do not include sawing logs into lumber, chipping, or other milling operations. The operations specified in this paragraph (g)(2)(v)(C) will be considered "incidental to farming operations" only if they are of a minor nature in comparison with the total farming operations involved. Therefore, a treefarmer or timbergrower may not claim that a highway motor vehicle used in that trade or business is used directly in agricultural production.

(D) *Use of a highway motor vehicle in connection with the operation, management, conservation, improvement, or maintenance of a farm.* A highway motor vehicles is used directly for agricultural production if it is used in connection with the operation, management, conservation, improvement, or maintenance of a farm and its tools and equipment. Examples of these operations include clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, painting, and other activities which contribute in any way to the conduct of a farm as such, as distinguished from any other enterprise in which the owner of the highway motor vehicle may be engaged.

(3) *Mileage on farm not counted toward 7,500 mile limit.* For purposes of this section, the number of miles which a highway motor vehicle is driven on a farm and not on the public highways shall not be taken into account when determining whether the vehicle's mileage is in excess of 7,500 miles. Accurate records should be kept by taxpayers of the number of miles that a highway motor vehicle is operated on a farm.

(h) *Owner.* For purposes of this section the term "owner" means, with respect to any highway motor vehicle, the person described in section 4481(b).

Par. 7. New § 41.4483–5 and § 41.4483–6 are added immediately after newly designated § 41.4483–4 to read as set forth below:

§ 41.4483–5 Termination of exemptions.

The exemptions described in §§ 41.4483–1 and 41.4483–2 shall not apply on and after October 1, 1988.

§ 41.4483–6 Reduction in tax for trucks used in logging.

(a) *In general.* The tax imposed by section 4481 shall be reduced by 25 percent in the case of a truck used in logging.

(b) *Truck used in logging.* The term "truck used in logging" means any highway motor vehicle which—

(1) Is used exclusively during the taxable period for the transportation, to and from a point located on a forested site, of products harvested from such forested site, and

(2) Is registered (under the laws of the State or States in which such vehicle is required to be registered) as a highway motor vehicle used in the transportation of harvested forest products. Products harvested from the forested site may include timber which has been processed for commercial use by sawing into lumber, chipping or other milling operations if such processing occurs

prior to transportation from the forested site.

Par. 8. Section 41.6001–1 is amended as follows:

(a) Paragraph (a) introductory text and paragraphs (a)(5) and (a)(6) are revised to read as set forth below.

(b) Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e) respectively.

(c) A new paragraph (c) is inserted immediately after paragraph (b) to read as set forth below.

(d) Newly designated paragraph (e)(2) is revised to read as set forth below.

§ 41.6001–1 Records.

(a) *Records to be kept.* Every person in whose name a highway motor vehicle having a taxable gross weight of at least 55,000 pounds is registered or required to be registered at any time during the taxable period shall keep records sufficient to enable the district director to determine whether such person is liable for the tax and, if so, the amount thereof. See § 41.4482(b)–1 for the definition of taxable gross weight. Such records shall show with respect to each such vehicle:

* * * * *

(5) In the case of any such vehicle disposed of otherwise than by sale or other transfer (including disposition by theft or destruction for taxable periods after June 30, 1984), the date and method of disposition of the vehicle.

(6) In the case of a secondhand highway motor vehicle acquired at any time in the taxable period, evidence showing whether there was a prior taxable use in such taxable period of the highway motor vehicle (see paragraph (b) of § 41.4481–2) or, for taxable periods after June 30, 1984, whether there was a suspension of tax in effect (see § 41.4483–3). For filing requirements of purchaser of second-hand vehicle, see paragraph (b) of § 41.6011(a)–1.

* * * * *

(c) *Exemption for vehicles used 5,000 miles or less.* The owner of a highway motor vehicle who reasonably expects the vehicle to be exempt from the tax under section 4481(a) by reason of § 41.4483–3(c) for a given taxable period shall keep records which indicate the reason that the use of the vehicle is not expected to exceed 5,000 miles on public highways.

* * * * *

(e) * * *

(2) Records required by paragraph (a) of this section shall be maintained for a period of at least 3 years after the date the tax becomes due or the date the tax is paid, whichever is the later. Records required by paragraphs (b) and (c) of this section shall be maintained for a period of at least 3 years after the end of the taxable period for which such exemption applies. Records required by paragraph (d) of this section (including any record required by paragraphs (a), (b), or (c) of this section which relates to a claim) shall be maintained for a period of at least 3 years after the date the claim is filed.

Par. 9. A new § 41.6001–2 is inserted immediately after § 41.6001–1 to read as follows:

§ 41.6001–2 Proof of payment for state registration purposes.

(a) *Scope.* This section sets forth the circumstances under which a State must require proof of payment of the tax imposed by section 4481(a), and the required manner in which such proof of payment is presented, before registering a highway motor vehicle. A State must comply with the provisions of this section in order to avoid a reduction of Federal-aid highway funds apportioned under 23 U.S.C. 104(b)(5). The rules of this section apply to highway motor vehicles for which applications for registration are received by a State on or after January 1, 1985. For purposes of this section, an application for registration which is mailed will be considered to be received by a State on the date on which it is postmarked.

(b) *Proof of payment required*—(1) *In general.* A State to which an application is made to register a highway motor vehicle must, before issuing such registration, receive from the registrant proof of payment of the tax imposed by section 4481(a) (or proof of suspension of such tax under § 41.4483–3) unless otherwise provided in this paragraph (b)(1) or in paragraphs (c) (1), (2), or (3) of this section. See paragraph (d) of this section for the meaning of "proof of payment". The term "proof of payment", when used in this section, shall be considered to refer in appropriate cases to proof of suspension of the tax imposed by section 4481(a). Except as provided in paragraph (b)(2) of this section, any proof of payment presented to a State must relate to tax paid (or suspended under § 41.4483–3) for the taxable period which includes the date that the State receives the application for registration. A State must be presented proof of payment when issuing a "base plate" under the International Registration Plan (IRP) (or similar agreement) for a highway motor vehicle, but a second State may issue a "prorate license" under the IRP (or similar agreement) without being presented proof of payment of the tax imposed by section 4481(a) or any declaration described in paragraph (c) of this section. Further, a State may register a highway motor vehicle without proof of payment if the person registering the vehicle presents the original or a photocopy of a bill of sale (or other document evidencing transfer) indicating that the vehicle was purchased by the owner either as a new or used vehicle during the preceding 60 days before the date that the State receives the application for registration of such vehicle. A State receiving proof of payment under this section is not required to retain such proof in its records.

(2) *Registration during certain months.* In the case of a highway motor vehicle subject to tax under section 4481(a) for which a State receives an application for registration during the months of July or August, proof of payment for the immediately preceding taxable period may be used to verify payment of the tax imposed by section 4481(a).

(c) *Declaration required for vehicles not subject to tax*—(1) *Application for registration received by a State on or after January 1, 1985 and before July 1, 1985.* A State that receives an application for registration of a highway motor vehicle on or after January 1, 1985 and before July 1, 1985, may register such vehicle without receiving proof of payment of the tax imposed by section 4481(a), if such State receives a written declaration stating that, during the taxable period which includes the date that the State receives the application for registration, such highway motor vehicle did not have a taxable gross weight of 55,000 pounds or more as defined in § 41.4482(b)–1T. The written declaration must state the number of vehicles being registered that have a taxable gross weight of less than 55,000 pounds and must be signed by the person registering the vehicles. This written declaration may be in a form similar to the one provided in § 41.4482(b)–1(e)(2).

(2) *Application for registration received by a State on or after July, 1985*—(i) *States that register vehicles on the basis of unladen weight.* A State that—

(A) Registers vehicles on the basis of unladen weight, and

(B) Receives an application ot register a highway motor vehicle on or after July 1, 1985, may register such vehicle without receiving proof of payment of the tax imposed by section 4481(a), if it receives a written declaration described in paragraph (c)(1) of this section with respect to such vehicle. This rule applies whether or not a prorate license is

issued (under the IRP or similar agreement) for any other State.

(ii) *States that register vehicles other than on the basis of unladen weight.* A State that registers vehicles other than on the basis of unladen weight which receives, on or after July 1, 1985, an application to register, or an application to register and to issue prorate licenses for, a highway motor vehicle at registered weights of less than 55,000 pounds, may register such vehicle without receiving either proof of payment or the written declaration described in paragraph (c)(1) of this section.

(d) *Proof of payment*—(1) *In general.* (i) The proof of payment required in paragraph (b) of this section shall consist of a receipted Schedule 1 (Form 2290) that is returned by the Internal Revenue Service to a taxpayer filing a return of tax under section 4481(a), or a photocopy of such receipted Schedule 1. Such Schedule 1 shall serve as proof of suspension of such tax under § 41.4483–3 for the number of vehicle entered in that part of the Schedule 1 designated for vehicles for which tax has been suspended. Except as provided in paragraph (d)(1)(ii) of this section, the vehicle identification number of the vehicle being registered must appear on the Schedule 1 (or an attached page) in order for the Schedule 1 to be valid proof of payment for such vehicle.

(ii) If a State receives a receipted Schedule 1 from a registrant on which the total of the number of vehicles for which tax has not been suspended under § 41.4483–3 exceeds 20, such Schedule 1 shall be accepted as proof of payment in support of the registration of a number of vehicles equal to or less than such total, and a list of the vehicles (or their vehicle identification numbers) is not required as part of such proof of payment. Similarly, if a State receives a receipted Schedule 1 from a registrant on which the total of the number of vehicles for which tax has been suspended under § 41.4483–3 exceeds 10, such Schedule 1 shall be accepted as proof of payment for the registration of a number of vehicles equal to or less than such total, and a list of the vehicles is not required as part of such proof of payment.

(iii) For applications for registration received by a State on or after September 1, 1985, a Schedule 1 (other than a Schedule 1 described in paragraph (d)(1)(ii) of this section) shall only serve as valid proof of payment of a vehicle whose vehicle identification number appears on the Schedule 1 (or is on an attached page) and which is being registered at a weight equal to or less than the taxable gross weight listed on the Schedule 1 for such vehicle.

(2) *Acceptable substitute for receipted Schedule 1.* For purposes of this section, a State shall accept as proof of payment a photocopy of the Form 2290 (with the Schedule 1 attached) which was filed with the Internal Revenue Service for the vehicle being registered with sufficient documentation of payment of tax due at the time the Form 2290 was filed (such as a photocopy of both sides of a cancelled check). This substitute proof of payment may be used to register a vehicle when, for example, the receipted Schedule 1 has been lost, or when at the time required for registration of a vehicle, a receipted Schedule 1 has not been received by a taxpayer who has filed a Form 2290 with respect to such vehicle. The rules of paragraph (d)(1) of this section regarding the circumstances in which a list of vehicle identification numbers is not required as part of a valid proof of payment, apply to a non-receipted Schedule 1 received by a State with a Form 2290 as a substitute proof of payment under this paragraph (d)(2).

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). A applies to register a 3-axle single unit truck in State R, a member of the International Registration Plan, on April 1, 1985. State R registers vehicles based on unladen weight. At the same time, A applies for a "prorate license" to use the truck in State S. State S does not register vehicles on the basis of unladen weight. For purposes of registering for the State S "prorate license", A declares the gross weight of his truck at 50,000 pounds. A does not register the truck in any other states. A's truck has a taxable gross weight, as determined under § 41.4482(b)-1T, of less than 55,000 pounds and therefore is not subject to tax under section 4481(a). State R may not register A's truck without receiving a decaration described in paragraph (c)(1) of this section.

Example (2). Assume the same facts as in example (1), except that A applies to register his truck on October 1, 1985. Under paragraph (c)(2)(ii) of this section, State R may not register A's truck without receiving a declaration described in paragraph (c)(1) of this section.

Example (3). Assume the same facts as in example (2) except that A applies for a prorate license in State S at a registered weight of 60,000 pounds. The taxable gross weight of A's truck, as determined under § 41.4482(b)–1(e) is 60,000 pounds. State R may not register A's truck unless it receives proof of payment within the meaning of paragraph (d) of this section.

Example (4). On October 10, 1985, C applies to register each of 9 vehicles in State U at a registered weight of 70,000 pounds. C has not applied for registration in any other states. At the time of applying for registration, C presents a photocopy of a receipted Schedule 1 (Form 2290) that shows a total of 9 vehicles which are subject to tax under section 4481(a) and for which tax is not suspended under § 41.4483–3(a). The vehicle identification numbers of the vehicles that C is seeking to register must be listed on the Schedule 1 in order for State U to register the vehicles. In addition, the taxable gross weight for each vehicle must be listed on the Schedule 1 and must be at least 70,000 pounds.

Example (5). On November 10, 1985, B applies to register each of 10 vehicles in State T at a registered weight of 70,000 pounds. B presents with the registration application, a photocopy of a receipted Schedule 1 (Form 2290) that shows a total of 100 vehicles which are subject to tax under section 4481(a). No vehicle identification numbers are listed on the Schedule 1 and no list of such numbers is attached. There are no taxable gross weights listed on the Schedule 1 for any of the vehicles. State T may consider the Schedule 1 as proper proof of payment under paragraph (d)(1) of this section and may register B's vehicles.

PART 48—[AMENDED]

Par. 10. New §§ 48.6427–2 through 48.6427–7 are inserted immediately after § 48.6421(g)–1 to read as follows:

§§ 48.6427–2 through 48.6427–5 [Reserved]

§ 48.6427–6 Limitation on credit or refund of tax paid on fuel used in intercity, local or school buses after July 31, 1984.

(a) *Limitation on amount of credit or refund*—(1) *In general.* In the case of fuel sold or used after July 31, 1984, on which tax was imposed under section 4041(a), the amount of credit or refund under section 6427(b)(1) shall not exceed 12 cents per gallon except where fuel is used in a bus while such bus is being operated as a "qualified local bus" in which case the credit or refund shall be the full amount of tax paid under section 4041(a) on such fuel.

(2) *Qualified local bus.* A bus is condsidered to be operated as a "qualified local bus" if such bus—

(i) Is engaged in furnishing (for compensation) intracity passenger land transportation that is available to the general public and is scheduled and along regular routes,

(ii) Has a seating capacity of a least 20 adults (not including the driver), and

(iii) Is under contract with (or is receiving more than a nominal subsidy from) any State or local government (as defined in section 4221(d)) to furnish such transportation.

A company that operates qualified local buses is eligible for a full refund or credit only with respect to fuel used while such buses are operating as qualified local buses. For example, a company that operates its buses along

subsidized intracity and also on intercity or unsubsidized intracity routes may obtain a full refund or credit only with respect to fuel used while operating the subsidized intracity routes.

(b) *Meaning of terms*—(1) *Contract with a State or local government.* A bus is under contract with a State or local government only if the contract imposes a bona fide obligation on the operator or the bus to furnish the transportation to which the contract relates.

(2) *More than a nominal subsidy.* A subsidy is more than nominal if the subsidy is reasonably expected to exceed an amount equal to 3 cents multiplied by the number of gallons of fuel used while operating on subsidized routes.

(3) *Intracity passenger land transportation.* The term "intracity passenger land transportation" means the land transportation of passengers to and from points located within the same metropolitan area. The term includes transportation along routes that cross State, city or county boundaries provided such routes remain within the metropolitan area.

§ 48.6427–7 Credit or refund of the increased diesel fuel tax to the original purchaser of a diesel-powered automobile or light truck.

(a) *In general.* A credit or refund of the diesel fuel differential amount may be claimed under section 6427(g) for a qualified diesel-powered highway vehicle purchased after January 1, 1985, and before January 1, 1988. A credit or refund of a fraction of the diesel fuel differential amount may be claimed for certain qualified diesel-powered highway vehicles held on Janury 1, 1985. Any person who is, or is treated as, an original purchaser of a qualified diesel-powered highway vehicle is eligible to claim a credit or refund of the diesel fuel differential amount (or fraction thereof). No interest is payable on the diesel fuel differential amount (or fraction thereof).

(b) *Original purchaser*—(1) *In general.* Generally, an original purchaser is the first person to purchase a new qualified diesel-powered highway vehicle after January 1, 1985 for a use other than resale. In addition, a person holding a qualified diesel-powered highway vehicle for a use other than resale at the end of January 1, 1985, is treated as an original purchaser. For purposes of determining the holder of the vehicle at the end of January 1, 1985, the owner of the vehicle for federal income tax purposes is treated as the holder of the vehicle. However, State or local governments (as defined in section 4221(d)(4)) or nonprofit educational organizations (as defined in section 4221(d)(5)), do not qualify as original purchasers or as holders who are treated as original purchasers.

(2) *Use other than resale*—(i) *Use of a vehicle by a dealer as a demonstrator.* The use of a new vehicle by a dealer as a demonstrator will not be treated as a use other than resale, nor will it cause the vehicle to be treated as other than new when sold by a dealer. Thus, a dealer may not claim a credit or refund under this section for a vehicle used as a demonstrator vehicle; rather, the first person to purchase the demonstrator vehicle for a use other than resale will qualify as the original purchaser of the vehicle.

(ii) *Treatment of leased vehicles.* The lease or rental of a vehicle is treated as a use other than resale both in the case of vehicles purchased after January 1, 1985, and vehicles held at the end of such date. Thus, for example, a person who purchases a qualified diesel-powered highway vehicle on January 15, 1985, and leases the vehicle under either a long-term or short-term lease under which the lessee is not treated as the owner for Federal income tax purposes, is eligible to claim a credit or refund for the diesel fuel differential amount. In addition, a person who is the owner-lessor of a vehicle leased to a lessee under either a long-term or short-term lease in effect at the end of January 1, 1985, will be treated as the holder of such vehicle at the end of January 1, 1985 (unless the lease is treated as a sale for Federal income tax purposes).

(3) *Vehicles subject to a lien.* If a person purchases a vehicle subject to a lien and registers the vehicle in the name of the lienholder, the purchaser is eligible to claim the credit or refund even if the lienholder holds nominal title to the vehicle.

(c) *Qualified diesel-powered highway vehicle.* A qualified diesel-powered highway vehicle (as defined in § 48.4041–7(b)) which—

(1) Has at least 4 wheels,

(2) Has a gross vehicle weight rating (within the meaning of § 48.4061(a)–1(f)(3)) of 10,000 pounds or less, and

(3) Is registered for highway use in the United States under the laws of any State.

(d) *Diesel fuel differential amount*—(1) *In general.* The diesel fuel differential amount is $102 in the case of a vehicle other than a truck or van and $198 in the case of a truck or van. A van for this purpose is a vehicle which has no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

(2) *Amount of credit or refund.* The amount of credit or refund allowable to a person holding a qualified diesel-powered highway vehicle on January 1, 1985, depends upon the model year of the vehicle. The table below sets forth the applicable amounts:

Model year of qualified diesel-powered highway vehicle	Amount	
	Other than truck or van	Truck or van
1984 or 1985	$102	$198
1983	85	165
1982	68	132
1981	51	99
1980	34	66
1979	17	33

No credit or refund is allowed in the case of a 1978 or earlier model year vehicle. The model year designated by the manufacturer for the vehicle is the model year for purposes of the above table.

(e) *Reduction in basis.* For purposes of substitle A of the Internal Revenue Code, the basis of any qualified diesel-powered highway vehicle is reduced by the diesel fuel differential amount (or fraction thereof) allowable with respect to such vehicle. For example, if a qualified diesel-powered highway vehicle is purchased for business purposes by an original purchaser on January 2, 1985, the basis of such vehicle for purposes of determining depreciation, investment tax credit, and the amount of gain or loss to be recognized upon a disposition of the vehicle is reduced by $102 in the case of a vehicle other than a truck or van, and $198 in the case of a truck or van. Such basis reduction shall be considered to occur on the date of purchase or, in the case of a vehicle held on January 1, 1985, on such date.

(f) *Deduction for business purposes.* The availability or claiming of the diesel fuel differential amount (or fraction thereof) as a credit or refund has no effect on the availability to the taxpayer of any otherwise allowable deduction for the cost of diesel fuel purchased by the taxpayer.

(g) *Claiming the credit or refund*—(1) *One-time claim.* The diesel fuel differential amount (or fraction thereof) may be claimed only once for a qualified diesel-powered highway vehicle. The claim is made by the original purchaser or person treated as the original purchaser, and is claimed as an income tax credit, unless such person is eligible under section 6427(j) to file a claim for refund in lieu of an income tax credit.

(2) *Procedure for claiming the diesel fuel differential amount as an income tax credit.* The amount of credit determined under paragraphs (d) of this section is entered on Form 4136 together

with any other credits to be entered on such Form. The Form 4136 is then attached to the original purchaser's income tax return.

(3) *Time for claiming credit.* In the case of a qualified diesel-powered highway vehicle purchased by an original purchaser after January 1, 1985, and before January 1, 1988, the credit is claimed on the income tax return for the taxable year during which the vehicle was purchased. In the case of a person who is treated as an original purchaser by reason of holding the vehicle at the end of January 1, 1985, the credit is claimed on the income tax return for the taxable year which includes December 31, 1984, *i.e.*, the tax return for 1984 in the case of a calendar year taxpayer.

(4) *Procedure for claiming the diesel fuel differential amount as a refund.* The diesel fuel differential amount may be claimed by the original purchaser or person treated as the original purchaser, as a refund by filing Form 843 (Claim) with the Internal Revenue Service.

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 84-29182 Filed 11-2-84; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 41 and 48

[LR-31-83]

Heavy Vehicle Use Tax Credits and Refunds of the Tax on Diesel Fuel; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the imposition of tax on the use of heavy vehicles and relating to credits and refunds of the tax imposed on the sale of diesel fuel.

DATES: The public hearing will be held on Friday, December 14, 1984, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, November 30, 1984.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR-31-83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 4481, 4482 and 4483 of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the **Federal Register** (See FR Doc. 84-29182.)

The rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submit comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, November 31, 1984, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-29275 Filed 11-5-84; 8:45 am]

BILLING CODE 4830-01-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1121

Proposed Regulations for Implementation of Privacy Act of 1974

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Proposed rule.

SUMMARY: The following proposed regulations drafted in accordance with section (f) of 5 U.S.C. 552a, the Privacy Act of 1974, are hereby offered for public comment. The purposes of these regulations are to establish procedures by which an individual can determine if the Board maintains a system of records which includes a record pertaining to that individual and also to establish procedures for individual access to the records for purposes of review, amendment and/or correction.

DATE: Comments are due on or before December 6, 1984.

ADDRESS: Send comments to the Executive Director, Architectural and Transportation Barriers Compliance Board, 330 C Street, SW., Room 1010, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Merrily F. Raffa, General Counsel, (202) 245-1801, voice or TDD.

List of Subjects in 36 CFR Part 1121

Administrative practice and procedure, Archives and records, Privacy.

For the reasons stated in the summary, it is proposed to add the following Part to Title 36 of the CFR.

PART 1121—PRIVACY ACT IMPLEMENTATION

Sec.

1121.1 Purpose and scope.
1121.2 Definitions.
1121.3 Procedures for requests pertaining to individuals' records in a records system.
1121.4 Times, places, and requirements for the identification of the individual making a request.
1121.5 Access to requested information to the individual.
1121.6 Request for correction or amendment to the record.
1121.7 Agency review of request for correction or amendment of the record.
1121.8 Appeal of an initial adverse agency determination on correction or amendment of the record.
1121.9 Notification of dispute.
1121.10 Disclosure of record to a person other than the individual to whom the record pertains.
1121.11 Accounting of disclosures.
1121.12 Fees.

Authority: 5 U.S.C. 552a; Pub. L. 93-579.

§ 1121.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Architectural and Transportation Barriers Compliance Board, hereafter known as the Board or ATBCB, maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 1121.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Board, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number.

(d) The term "system of records" means a group of any records under control of the Board from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(f) The term "authorized representative" means a person who acts on an "individual's" behalf for purposes of these regulations, pursuant to written, signed instructions from the individual.

§ 1121.3 Procedures for requests pertaining to individuals' records in a records system.

An individual or authorized representative shall submit a written request to the Administrative Officer to determine if a system of records named by the individual contains a record pertaining to the individual. The individual or authorized representative shall submit a written request to the Executive Director of the ATBCB which states the individual's desire to review his or her record.

§ 1121.4 Times, places, and requirements for the identification of the individual making a request.

An individual or authorized representative making a request to the Administrative Officer of the ATBCB pursuant to Section 1121.3 shall present the request at the ATBCB offices, 330 C Street, SW., Room 1010, Washington, D.C. 20202, on any business day between the hours of 9 a.m. and 5:30 p.m. The individual or authorized representative submitting the request should present himself or herself at the ATBCB's offices with a form of identification which will permit the ATBCB to verify that the individual is the same individual as contained in the record requested. An authorized representative shall present a written document authorizing access. The document must be signed by the individual.

§ 1121.5 Access to requested information to the individual.

Upon verification of identity the Board shall disclose to the individual or authorized representative the information contained in the record which pertains to that individual. Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

§ 1121.6 Request for correction or amendment to the record.

The individual or authorized representative should submit a request to the Administrative Officer which states the individual's desire to correct or to amend his or her record. The request is to be made in accord with provisions of § 1121.4

§ 1121.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Administrative Officer will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual or authorized representative of his or her refusal to correct or to amend the record in accordance with the request, the reason for the refusal and the procedures established by the Board for the individual to request a review of that refusal.

§ 1121.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Administrative Officer to correct or to amend his or her record may submit a request for a review of such refusal to the Executive Director, ATBCB, 330 C Street, SW., Room 1010, Washington, DC 20202. The Executive Director will, not later than thirty (30) working days from the date on which the individual requests such review, complete such review and make final determination, unless, for good cause shown, the Executive Director extends such thirty-day period. If, after his or her review, the Executive Director also refuses to correct or to amend the record in accordance with the request, the Board shall permit the individual or authorized representative to file with the Executive Director a concise statement setting forth the reasons for his or her disagreement with the refusal of the Executive Director and shall notify the individual or authorized representative that he or she may seek judicial review of the Executive Director's determination under 5 U.S.C. 552a(g)(1)(A).

§ 1121.9 Notification of dispute.

In any disclosure pursuant to § 1121.10 containing information about which the individual has previously filed a statement of disagreement under § 1121.8, the Board shall clearly note any portion of the record which is disputed and provide copies of the statement and, if the Executive Director deems it appropriate, copies of a concise statement of the reasons of the Executive Director for not making the amendments requested.

§ 1121.10 Disclosure of record to a person other than the individual to whom the record pertains.

The Board will not disclose a record to any individual or agency other than the individual to whom the record pertains, except to an authorized representative, unless the disclosure has been listed as a "routine use" in the Board's notices of its systems of records, or falls within one of the special disclosure situations listed in the Privacy Act of 1974 (5 U.S.C. 552a(b)).

§ 1121.11 Accounting of disclosures.

(a) The Board shall, except for disclosure made under sections (b)(1) and (b)(2) of the Privacy Act of 1974 (5 U.S.C. 552a) keep an accurate accounting of—

(1) the date, nature and purpose of each disclosure of a record to any person or another agency made pursuant to § 1121.10; and

(2) the name and address of the person or agency to whom the disclosure is made.

(b) This accounting shall be retained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(c) The Board shall make this accounting available to the individual named in the record at his or her request, except for disclosures made under section (b)(7) of the Privacy Act of 1974 (5 U.S.C. 552a).

(d) The Board shall inform any person or other agency to whom disclosure has been made pursuant to § 1121.10 about any correction or notation of dispute made by the Board.

§ 1121.12 Fees.

If an individual or authorized representative requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

Signed this 22nd day of October 1984.

Mary Alice Ford,

Chairperson.

[FR Doc. 84-29090 Filed 11-5-84; 8:45 am]

BILLING CODE 6820-BP-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-2-FRL 2711-6]

Nebraska; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of State of Nebraska for final authorization, public hearing and public comment period.

SUMMARY: Nebraska has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Nebraska's application and found it to not currently include all the information necessary for final authorization. Nebraska has agreed to address the EPA concerns, as identified in this notice, to EPA's satisfaction prior to public hearing on the application. Thus, EPA tentatively intends to grant final authorization to Nebraska to operate its hazardous waste program in lieu of the Federal program.

Nebraska's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the tentative decisions. In making its final decision, EPA will consider all public comments on the tentative decision and the measures taken by the State to address the EPA concerns.

DATES: A public hearing is scheduled for December 13, 1984. Nebraska will participate in the public hearing held by EPA on this subject. All comments on Nebraska's final authorization application must be received by the close of business on December 13, 1984.

ADDRESSES: Copies of Nebraska's final authorization application are available during regular business hours at the following addresses for inspection:

Nebraska Department of Environmental Control, Hazardous Waste Management Section, 4th Floor State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509, (402) 471-4217, Mike Steffensmeier

U.S. EPA Headquarters Library PM, 211A, 401 M Street, SW, Washington, D.C. 20460 (202) 382-5928

U.S. EPA Region VII Library, 324 East 11th Street, Room 1617, Kansas City, Missouri 64106 (816) 374-3497.

Written comments should be sent to: Chet McLaughlin, Chief, State Programs Section, Waste Management Branch, U.S. EPA, Region VII, 324 East 11th Street, Kansas City, Missouri 64106.

EPA will hold the Public Hearing on December 13, 1984 in Conference Room 2C of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska at 7:00 p.m.

FOR FURTHER INFORMATION CONTACT: Chet McLaughlin, Chief, State Programs Section, Waste Management Branch, U.S. EPA, Region VII, 324 East 11th Street, Kansas City, Missouri 64106, 816-374-6534.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize state hazardous waste programs to operate in the state in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the state program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing requlations at 40 CFR 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260-263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers, tanks, surface impoundments, and waste piles. Phase IIB covers incinerator facilities, and Phase IIC addresses landfills and land treatment facilities. By statute, all interim authorizations expire on January 26, 1985. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the state has not received final authorization.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the state program: (1) is "equivalent" to the Federal programs, (2) is consistent with the Federal program and other State program, and (3) provides for adequate enforcement (Section 3008(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1-271.23.

B. Nebraska

The State of Nebraska received Phase I interim authorization on May 14, 1982. Nebraska submitted a draft application for final authorization to EPA on December 19, 1983. Following the State's public hearing to solicit comments on its intention to apply for final authorization on June 4, 1984, Nebraska submitted its official application for final authorization on June 11, 1984.

Nebraska did not include jurisdiction over Indian Lands in the scope of its final authorization application.

After reviewing the Nebraska application EPA has requested additional information and clarification to the application as set forth in its July 20, 1984 letter of comment as follows:

1. Submission of an enforcement agreement, with attendant procedures to demonstrate that the State program is equivalent to the Federal.

2. Amend the Nebraska Hazardous Waste Regulations to:

(a) Make the definition of "existing portion" in Nebraska Regulation Title 128 Chapter 16, Subchapter 028 equivalent to the Federal definition as found at 40 CFR 260.10.

(b) Delete the exception for disposal facilities from Nebraska regulation Title 128 Chapter 1 Subchapter 008 to make it equivalent to the Federal regulation found at 40 CFR 270.50(c).

3. The Attorney General's Statement must be amended or a new statement made to include regulations lawfully adopted July 20, 1984 and the regulatory changes noted above.

4. The Attorney General must, either in the amended Statement or by statement at the public hearing:

(a) Confirm EPA's interpretation that the term "inspection" in Nebraska Statute 1527 (2) amended by LB 1078 is broad enough to allow EPA to copy confidential records.

(b) Address the issues of "burden of proof and degree of knowledge" found at 40 CFR 271.16(b)(2) to verify the equivalence of Nebraska statutes.

The EPA also has other concerns related to the administration and

operation of the Nebraska hazardous waste management program. Performance audits of the Nebraska hazardous waste management program were conducted by EPA, Region VII, in June 1983 and July 1984. The 1983 audit found the Nebraska program to be seriously deficient and made major recommenations for improvement.

The 1984 audit found that the State has been and is being responsive to the audit recommendations. Many of the dificiencies have been corrected or improved. Improved performance has not been demonstrated in permitting, enforcement and related activities; however, the State has made appropriate organizational changes and assigned new personnel to provide adequate resources to carry out this work.

The letter of intent commits the State to complete the implementation of program improvements to assure a strong and effective hazardous waste management prgram. The majority of actions will be complete prior to the final decision on authorization. Performance under the Letter of Intent will be assessed before a final decision on approval/denial is made.

Nebraska has indicated that it will satisfy all of EPA's concerns by providing written assurances prior to the December 13, 1984 public hearing, by a letter of intent or, where appropriate, by statement at the hearing. EPA's concerns on the application are discussed in more detail in the July 20, 1984 letter from Morris Kay, Regional Administrator, EPA Region VII, to Dennis Grams, Director, Nebraska Department of Environmental Control, which is in the public record.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on December 13, 1984 at 7:00 p.m. in Conference Room 2C of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. The public may also submit written comments on EPA's tentative determination until December 13, 1984. Copies of Nebraska's application are available for inspection and copying at the locations indicated in the **"ADDRESSES"** section of this notice.

In making its final decision, EPA will consider all public comments on the tentative determination and the measures taken by the State to address these EPA concerns. EPA expects to make a final decision on whether or not to approve/deny Nebraska's program by January 25, 1985.

However, this schedule will change if amendments made to Nebraska's application are substantial. 40 CFR 271.20(b) requires the State to provide for additional public comment if the proposed State program is substantially modified after the public comment period ends. 40 CFR 271.5(c) further provides that if the State's application materially changes during EPA's review period, the statutory review period begins again upon receipt of the revised submission. The State and EPA may also extend the review period by agreement (see 40 CFR 271.8(d)). EPA will give notice of its final decision or of a change in schedule in the Federal Register by January 25, 1985. That notice will include a summary of the reasons for the final decision, if made at that time, and response to all major comments received during the public comment period.

C. Transition of Existing RCRA Permits

The State does not have authority to take over existing EPA issued RCRA permits; therefore, EPA will administer the RCRA permits it has issued to facilities in the State until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal permits while they remain in force. When the State either incorporates the terms and conditions of the Federal permits in State RCRA permits or issues State RCRA permits to those facilities, EPA will primarily rely on the State to enforce those terms and conditions. The State will modify or revoke and reissue any state permits as RCRA pemits within 90 days after receiving final authorization.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

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

List of Subjects in 40 CFR Part 271

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

Authority: This notice is issued under the authority of section 2002(a), and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C., 6912(a), 6926, and 697(b), EPA Delegations 7.

Dated: October 9, 1984.

Morris Kay,

Regional Administrator.

[FR Doc. 84-29116 Filed 11-5-84; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 49, No. 216
Tuesday, November 6, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY:

Notice is hereby given in accordance with § 800.6(d)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that the Advisory Council on Historic Preservation will meet in the Managers Conference Room, Glendale City Hall, Glendale, California, on November 26, 1984, and the following day in Rooms 1 and 8, Holiday Inn, 600 N. Pacific, Glendale, California.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the Chairman of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The Agenda for the meeting includes the following:

Monday, November 26, 1984, Managers Conference Room, Glendale City Hall, Glendale, California, 9:00 a.m.

Call to Order, Chairman's Welcome, Swearing In Ceremony, Consideration of Minutes of the July 19, 1984, Meeting

I. Report of the Executive Director
  A. Reauthorization Legislation
  B. Budget
  C. Invited Participant Status
II. Report of the General Counsel
  A. Section 106 Regulations
  B. State Historic Prservation Legislation Guidelines
  C. Litigation

Recess for Lunch, 1:30 p.m.

III. Section 106 Case: California Route 7, South Pasadena, CA
  A. On-Site Inspection
  B. Review of the Panel Comments
  C. Analysis of FHWA Response by the Executive Director
  D. Council Discussion and Comments

Tuesday, November 27, 1984, Meeting Rooms 1 and 8, Holiday Inn, 600 N. Pacific, Glendale, California, 9:00 a.m.

IV. Report of the Office of Cultural Resource Preservation
  A. Congressional Symposium on Historic Preservation
  B. Design Competition
C. Section 106 Status Reports
V. New Program Initiatives
VI. New Business

One of the principal topics on the agenda is full Council review of the proposal by the California Department of Transportation (CALTRANS) to complete the Long Beach Freeway, California Route 7, through Pasadena and South Pasadena. Council comments have been requested by the Federal Highway Administration (FHWA), United States Department of Transportation, which is assisting in funding the undertaking.

Previously a panel of Council members reviewed the project and recommended an alternate route that would do less damage to the historic and cultural resources of California. FHWA responded to the recommendations of the panel, and the purpose for the consideration at the November 27–28 meeting is to review the response and decide what final comment will be made

Because the panel took extensive public testimony and heard reports from CALTRANS, FHWA, city officials, the California State Historic Preservation Officer, and others, the full Council meeting will not include formal reports by Federal and State agencies or local governments or public comments. CALTRANS and FHWA officials and representatives of local governments are being invited to be present to answer questions, and the meeting is open to the public.

DATE: The meeting will begin at 9:00 a.m., Monday, November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW, Suite 809, D.C. 20004, 202-786-0503.

Dated: November 1, 1984.

John M. Fowler,

Acting Executive Director.

[FR Doc. 84-29134 Filed 11-5-84; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program; Food Stamp Allotment Adjustment—November 1984

Correction

In FR Doc. 84-28060, beginning on page 42765 in the issue of Wednesday, October 24, 1984, make the following correction: On page 42766, the first entry in the third column of the table, under the heading "Urban Alaska," should read "110".

BILLING CODE 1505-01-M

Forest Service

The Mount St. Helens Scientific Advisory Board; Meeting

Mount St. Helens Scientific Advisory Board will meet at 9 a.m., December 11, 1984, at the Gifford Pinchot National Forest Supervisor's Office, 500 West 12th Street, Vancouver, Washington 98660, to develop scientific recommendations for the National Volcanic Monument relative to:

1. Discuss the Draft of the NVM Comprehensive Plan and begin development of the Board's recommendation(s).

2. Review the Army Corps of Engineers DEIS on the Toutle River sediment control.

3. Open discussion of topics of interest to the Advisory Board.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, Washington 98660, 206–696–7570. Written statements may be filed with the Board before or after the meeting.

Dated: October 29, 1984.

Claude R. Elton,

Acting Regional Forester.

[FR Doc. 84–29065 Filed 11–5–84; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Askalmore Creek Subwatershed (Y–17a), Mississippi; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFS Part 1500); and the Soil Conservation Service Guidelines (7 CFS Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for a supplement to the Askalmore Creek Subwatershed (Y–17a), Tallahatchie and Grenada Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: A. E. Sullivan, State Conservationist, Soil Conservation Service, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, MS 39269, telephone (601) 960–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, A. E. Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns flood prevention and drainage. The planned works of improvement include channel enlargement and construction of a weir.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting A. E. Sullivan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Patrick K. Wolf,

Acting State Conservationist.

[FR Doc. 84–29095 Filed 11–5–84; 8:45 am]

BILLING CODE 3410–16–M

Choctaw Creek Watershed, Texas; Intent To Prepare Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Choctaw Creek Watershed, Grayson County, Texas.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone (817) 774–1214.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy C. Griffin, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection, flood prevention and recreation. Alternatives available at this time for this authorized project are to continue with installation of the planned measures with minor modifications or to stop all further action.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held at 10:00 a.m., Thursday, November 15, 1984 in the Assembly Room (2nd Floor) of the Grayson County Courthouse, Sherman, Texas, to determine the scope of the evaluation of the proposed action. Further information on the proposed action may be obtained from Billy C. Griffin, State Conservationist, 101 South Main Street, Temple, Texas 76501–7682, or telephone (817) 774–1214.

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Bobby E. Hammond,

Acting State Conservationist.

[FR Doc. 84–29107 Filed 11–5–84; 8:45 am]

BILLING CODE 3410–16–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Privacy Act of 1974; Proposed Systems of Records

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Proposed System of Records for Implementation of the Privacy Act of 1974.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a, the Architectural and Transportation Barriers Compliance Board, hereafter known as the Board or as ATBCB, hereby publishes for comment those systems of records subject to the Privacy Act of 1974 which are maintained by the Board. Any person interested in commenting on the routine use portions of the system notices may do so by submitting comments in writing to the Executive Director of the Architectural and Transportation Barriers Compliance Board, 330 C Street, SW., Room 1010, Washington, D.C. 20202. Comments should be submitted within 30 days of publication of this notice. The Board's procedures for access to records in the systems are contained in 36 CFR Part 1121.

DATE: Comments are due on or before December 6, 1984. These systems will become effective December 6, 1984, unless the Board publishes notice to the contrary.

ADDRESS: Send comments to the Executive Director, Architectural and

Transportation Barriers Compliance Board, 330 C Street, SW., Room 1010, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Merrily F. Raffa, General Counsel, (202) 245–1801 (voice or TDD).

Proposed Systems of Records for Implementation of the Privacy Act of 1974

01

SYSTEM NAME:

Payroll records—Architectural and Transportation Barriers Compliance Board.

SYSTEM LOCATION:

General Services Administration (GSA), National Payroll Center, Kansas City, Kansas; copies held by the Board. (GSA holds records for the ATBCB under contract.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and public members of the Board.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health benefits records; requests for deductions; tax forms; W–2 forms; overtime requests; leave data; retirement reords. Records are used by the Board and GSA employees to maintain adequate payroll information for the Board employees, and otherwise by the Board and GSA employees who have a need for the record in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. "Money and Finance", generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisidiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Executive Director, ATBCB, 330 C Street, SW., Room 1010, Washington, D.C. 20202. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished to the city in response to written request from an appropriate city official to the Executive Director.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and microfilm.

RETRIEVABILITY:

Social Security number.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel, including among others, GSA liaison staff and finance personnel; and the Board administrative staff.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, ATBCB, 330 C Street, SW., Room 1010, Washington, D.C. 20202.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

RECORD ACCESS PROCEDURES:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

CONTESTING RECORDS PROCEDURES:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

RECORD SOURCE CATEGORIES:

The subject individual; the Board.

02

SYSTEM NAME:

General Financial Records—Architectural and Transportation Barriers Compliance Board.

SYSTEM LOCATION:

GSA, National Capital Region; copies held by the Board. (GSA holds records for the ATBCB under contract.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Board.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

SF–1038, Application and account for advance of funds; vendor register and vendor payment tape. Information is used by accounting technicians to maintain adequate financial information and by other officers and employees of GSA and the Board who have a need for the record in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. "Money and Finance", generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix. Records also are released to GAO for audits; to the IRS for investigation; and to private attorneys, pursuant to power of attorney.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and tape.

RETRIEVABILITY:

Manual and automated by name.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel including among others, GSA liaison staff, finance personnel and the Board administrative staff.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, ATBCB, 330 C Street, SW., Room 1010, Washington, D.C. 20202.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

RECORDS ACCESS PROCEDURES:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

CONTESTING RECORDS PROCEDURES:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

RECORD SOURCE CATEGORIES:

The subject individual; the Board.

03

SYSTEM NAME:

General Unofficial Personnel Files—Architectural and Transportation Barriers Compliance Board.

SYSTEM LOCATION:

ATBCB offices.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

Biographic information; correspondence with members of the Board; personnel actions; position discriptions.

AUTHORIZATION FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C. "Government Organization and Employees," generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper

RETRIEVABILITY AND ACCESSING:

Manual.

SAFEGUARDS:

Stored in lockable file cabinets, released only to authorized personnel, including among others, GSA liaison staff and the Board administrative staff.

RETENTION AND DISPOSAL:

Retained until no longer needed, then discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, ATBCB, 330 C Street, SW., Room 1010, Washington, D.C. 20202.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

RECORD ACCESS PROCEDURE:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

CONTESTING RECORD PROCEDURES:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

RECORD SOURCE CATEGORIES:

The subject individual; the Board.

04

SYSTEM NAME:

Mailing List—Architectural and Transportation Barriers Compliance Board.

SYSTEM LOCATION:

ATBCB offices and the Fairfax Computer Center, Fairfax.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Architect or designer; Health Care; Transportation; Consumer, self help, or social service; Federal government; Private organization or firm, professional association; College, university, or trade school; Trade association; Media; Legal profession; Contractor or engineer; Manufacturer or industry; State/local government; Library; Veterans organization; Congress; Voluntary standard/code group.

CATEGORIES OF RECORDS IN THE SYSTEM:

Same as above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 792.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Bimonthly newsletter (all categories), technical bulletins (varying categories), publications (varying categories), announcements (varying categories). The purpose of these mailings is to inform the general public and/or specific groups of Board activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

Category, Last Name, Zip Code.

SAFEGUARDS:

Information can only be retrieved from the system by authorized personnel.

RETENTION AND DISPOSAL:

Ongoing process of changes, deletions and additions to list.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, ATBCB, 330 C Street, SW, Room 1010, Washington, D.C. 20202.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

RECORD ACCESS PROCEDURES:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

CONTESTING RECORDS PROCEDURES:

Contact Executive Director or refer to the Board access regulations contained in 36 CFR Part 1121.

RECORD SOURCE CATEGORIES:

Same as mentioned previously.

Appendix—Architectural and Transportation Barriers Compliance Board

1. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of record may be referred, as a routine use, to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigation or prosecuting such violation or charged with enforcing or implementing the statue, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a "routine use" to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

4. A record from this system of records may be disclosed to an authorized appeal

grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

5. A record from this system of records may be disclosed to officers and employees of a Federal agency for purposes of audit.

6. A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

7. A record from this system of records may be disclosed to officers and employees of the GSA in connection with administrative services provided to the ATBCB under agreement with GSA.

8. In the event the Board deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

Signed this 22nd day of October 1984.

Mary Alice Ford,

Chairperson.

[FR Doc. 84-29089 Filed 11-5-84; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-402, A-351-402, A-580-401, A-201-403, and A-469-405]

Oil Country Tubular Goods From Argentina, Brazil, the Republic of Korea, Mexico, and Spain; Postponement of Preliminary Antidumping Determinations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of postponement of preliminary antidumping determinations.

SUMMARY: The preliminary antidumping determinations involving oil country tubular goods (OCTG) from Argentina, Brazil, the Republic of Korea, Mexico, and Spain are being postponed until not later than January 9, 1985.

EFFECTIVE DATE: November 6, 1984.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone (202) 377-2438.

SUPPLEMENTARY INFORMATION: On July 10, 1984, we announced the initiation of antidumping investigations to determine whether OCTG from Argentina, Brazil, the Republic of Korea, Mexico, and Spain are being, or are likely to be, sold in the United States at less than fair value (49 FR 28084-28088). The notices stated that we would issue preliminary determinations by November 20, 1984.

As detailed in those notices, the petitions alleged that imports from Argentina, Brazil, the Republic of Korea, Mexico, and Spain of OCTG are being, or are likely to be, sold in the United States at less than fair value.

On October 26, 1984, counsel for petitioners, Lone Star Steel Company, CF&I Steel Corporation, and LTV Steel Company, requested that the Department extend the period for the preliminary determinations until 210 days after the date of receipt of the petitions in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Accordingly, the period for determinations in these cases is hereby extended. We intend to issue preliminary determinations not later than January 9, 1985.

This notice is published pursuant to section 733(c)(2) of the Act.

The United States International Trade Commission is being advised of this postponement, in accordance with section 733(f) of the Act.

Scope of Investigation

The term *"Oil Country Tubular Goods (OCTG)"* covers hollow steel products of circular cross section intended for use in the drilling of oil or gas. It includes oil well casing, tubing and drill pipe of carbon or allow steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (e.g., proprietary), specifications as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

These investigations include OCTG that are finished and unfinished.

October 31, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-29155 Filed 11-5-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Japan Deep-Sea Trawlers Association et al.; Notice of Receipt of Applications for General Marine Mammal Permit

Notice is hereby given that the following applications have been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. fishery conservation zone during 1985 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

1. Japan Deep-Sea Trawlers Association, No. 601 Daito Building, 3-6, Kandaogawacho, Chiyoda-ku, Tokyo, Japan, has applied for a Category 1: "Towed or Dragged Gear" general permit to take up to 90 northern sea lions, 20 harbor seals, 5 fur seals, 5 sea otters and 10 walrus in the Bering Sea/Gulf of Alaska and up to 5 of each of the following: harbor seals, pilot whales, harbor porpoise, Atlantic white-sided dolphin, and bottlenose dolphin in the North Atlantic.

2. Hokuten Trawlers Association, c/o National Federation of Medium Trawlers, Toranomon Chuo Building, 1-16, Toranomon, 1-chome, Minatoku, Tokyo, Japan, has applied for a Category 1: "Towed or Dragged Gear" general permit to take up to 45 sea lions, up to 5 of each of the following: harbor seals, fur seals, sea otters, and up to 10 walrus in the Bering Sea and Aleutian Islands.

3. The North Pacific Longline-Gillnet Association, Zenkeiren Building, 2-7-2 Hirakawa-cho, Chiyoda-ku, Tokyo, Japan, has applied for a Category 5: "Other Gear" general permit to take marine mammals by harassment only.

4. VEB Fischfang Rostock, 2510 Rostock 5, German Democratic Republic has applied for a Category 1: "Towed or Dragged Gear" general permit to take up to 8 harbor seals and 10 cetaceans in the North Atlantic.

5. The Embassy of the Polish People's Republic, One Dag Hammarskjold Plaza, New York, N.Y. has applied on behalf of three Polish fishing companies for a Category 1: "Towed or Dragged Gear" general permit to take up to 90 northern

sea lions, 70 harbor seals, 35 dolphins and 25 porpoises in the Bering Sea, Gulf of Alaska and North Pacific Ocean.

The applications are available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Interested parties may submit written views on these applications within 30 days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: October 26, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-29124 Filed 11-5-84; 8:45 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The Caribbean Fishery Management Council and its Administrative Subcommittee will hold separate public meetings. The Council will hold its 52nd regular public meeting to consider fishery management plans under development and to discuss other Council matters. The Council's Administrative Subcommittee will meet to discuss issues related to the Council's regular administrative operations.

The Council's public meeting will convene on December 5, 1984, at approximately 9 a.m., and adjourn at approximately 5 p.m.; reconvene on December 6, at approximately 9 a.m., and adjourn at approximately noon. The Council's Administrative Subcommittee meeting will convene on December 4, at approximately 1:30 p.m., and will adjourn at approximately 5 p.m. The Council's meeting will take place at the Conference Room of the Hotel Pierre, 105 De Diego Avenue, Santurce, Puerto Rico, and the Administrative Subcommittee meeting will be held at the Council's office, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico. For further information, contact the Council's office; telephone: (809) 753-4926.

Dated: October 31, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-29185 Filed 11-5-84; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council: Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notices.

SUMMARY: Members of the North Pacific Fishery Management Council's Plan Team for Bering Sea/Aleutian Islands groundfish will meet at the Council's offices, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK, November 12, 1984, at 9 a.m., to review the status of groundfish stocks in the Bering Sea/Aleutian Islands for 1985, discuss total allowable catch options, and technical aspects of possible O-TALFF and O-JVP policies. For further information, contact Jeffrey Povolny, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

DATED: October 31, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-29184 Filed 11-5-84; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service and Fish and Wildlife Service; Joint meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act (Public Law 96-118).

DATE: The meeting will convene on Tuesday, December 11, 1984, at 10:00 a.m., and will adjourn at approximately 4:00 p.m. The meeting is open to the public.

ADDRESS: Room 7000 A&B, Department of the Interior Building, C Street between 18th and 19th NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, Office of Resource Investigations, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634-7466.

Dated: November 1, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 84-29183 Filed 11-5-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Missouri River Levee System Unit L-15

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement.

SUMMARY: 1. The primary purpose of this study is to evaluate potential structural and non-structural measures that could provide flood protection to approximately 50,000 acres of rural and urban land located near the confluence of the Missouri and Mississippi Rivers. the study area is bounded by the left bank (looking downstream) of the Missouri River between mile 0 and 27.1 and the right bank of the Mississippi River between mile 195 and 215.

2. Reasonable alternatives for flood protection include, (1) construction of earthen levees along the Missouri and Mississippi Rivers, (2) improvements to existing levees along the Missouri River and construction of a new levee on the Mississippi River, (3) no action, (4) flood proofing, (5) flood plain evacuation, and (6) combinations of the above.

3. Scoping Process:

a. A public notice outlining the study was distributed for public comment on October 16, 1984. Alternative plans will be developed in accordance with Corps of Engineer regulations and in consideration of the views expressed by the public and agencies of local, State, and Federal governments.

b. Environmental consultation and review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) and other applicable laws, regulations, and guidelines.

c. The U.S. Fish and Wildlife Service, Environmental Protection Agency, and Soil Conservation Service have been requested to be cooperating agencies for this study.

4. Scoping procedures will be incorporated into a public workshop planned for late 1984 or early 1985.

Comments on the October 1984 public notice will also be used to identify significant issues and resources. Except for these functions, no formal scoping meetings are presently planned.

5. The Kansas City District estimates that the DEIS for the Missouri River Levee Unit L-15 will be available for public review and comment in late 1986.

ADDRESS: Questions concerning the proposed study and the DEIS should be directed to Mr. Dick Taylor, Chief, Environmental Resources Branch, Corps of Engineers, 700 Federal Building, Kansas City, Missouri 64106. Commercial Telephone (816) 374-3672 or FTS 758-3672.

Dated: October 29, 1984.

Philip L. Rotert,

Chief, Planning Division.

[FR Doc. 84-29186 Filed 11-5-84; 8:45 am]

BILLING CODE 3710-KN-M

Department of the Navy

Naval Research Advisory Committee; Naval Surface Weapons Center Review Team; Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the Naval Research Advisory Committee's Naval Surface Weapons Center Review Team on November 7-8, 1984, as published in the issue of October 23, 1984 (49 FR 42607).

Dated: November 1, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-29122 Filed 11-5-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Guaranteed Student Loan Program and Plus Program

AGENCY: Department of Education.

ACTION: Notice of Special Allowances for Quarter Ending September 30, 1984.

SUMMARY: The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Programs (GSLP) or the PLUS Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087-1). Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087-1(b)(2)(B), for the quarter ending September 30, 1984, the special allowance will be paid at the following rates:

	Applicable interest rate, percent	Annual special allowance rate, percent	Special allowance rate, percent for quarter ending Sept. 30, 1984
GSLP loans or	7	7.375	1.84375
PLUS loans made prior to Oct. 1, 1981	9	5.375	1.34375
GSLP loans or	7	7.28	1.82
PLUS loans made on or after Oct. 1, 1981	8	6.28	1.57
	9	5.28	1.32
	12	2.28	0.57
	14	0.28	0.07

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate by making the following four calculations:

(a) *Step 1.* Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies.

(b) *Step 2.* Subtract from that average the applicable interest rate (7, 8, 9, 12, or 14 percent) of loans for which a holder is requesting payment.

(c) *Step 3.*

(1) Add 3.5 percent to the remainder; and

(2) In the case of loans made before October 1, 1982, round the sum upward to the nearest one-eighth of one percent.

(d) *Step 4.* Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Nancy Eakin, Program Specialist, or Larry Oxendine, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 245-2475.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: October 31, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-29150 Filed 11-5-84; 8:45 am]

BILLING CODE 4000-01-M

Endowment Grant Program; Fund-Raising Deadline for Matching Fiscal Year 1984 and 1985 Federal Endowment Grant Funds

The Secretary announces the closing date for raising matching funds under the Fiscal Year 1984 and Fiscal Year 1985 Endowment Grant Program funding competitions for those institutions selected for funding under these competitions.

The Endowment Grant Program is authorized by Section 333 of Title III of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1065a.

Under the Endowment Grant Program, the Secretary is authorized to make grants to eligible institutions of higher education for the purpose of establishing or increasing endowment funds at those institutions. The Federal grant funds must be matched dollar-for-dollar by the institution selected to receive a grant.

Closing Date for Raising Matching Funds for Institutions Selected To Receive Endowment Grants for Fiscal Year 1984 and Fiscal Year 1985: An institution selected to receive an endowment grant under the Fiscal Year (FY) 1984 or 1985 funding competitions has through July 15, 1985 to raise its matching funds.

Matching Federal Endowment Grant Funds

In the final regulations for the Endowment Grant Program, published in the **Federal Register** on July 12, 1984, 49 FR 28520, the Secretary included a provision in § 628.41(b) which provided eighteen months for institutions selected to participate under the Endowment Grant Program to raise the required matching funds. This provision was based upon proposed legislation submitted to the Congress by the Administration that would have allowed funds appropriated for this program to remain available until expended.

The Congress responded to the Administration's request for carryover authority by extending the availability of FY 1984 Endowment Grant Program funds to September 30, 1985, with no indication that it will make FY 1985 Endowment Grant Program funds available beyond September 30, 1985.

Because of this action, the Secretary has amended the Endowment Grant Program regulations, 34 CFR 628.41(b) (49 FR 37325, September 21, 1984). Under the amended regulations, instead of an eighteen-month fund-raising period, the period will be determined annually by the Secretary, and the Secretary's decision will be announced in the **Federal Register**. The end of a fund-raising period will not be later than the earlier of: (1) the last day of availability of the appropriation for that funding competition, or (2) eighteen months after an institution has been notified that it has been selected to receive a grant.

In accordance with § 628.41(b), the Secretary announces in this notice that the last day an institution selected to receive an endowment grant in the FY 1984 and FY 1985 competitions may

have to raise matching funds is July 15, 1985.

Subject to other limitations in the statute, the maximum endowment grant an institution may receive is the amount of the matching funds it raises through July 15, 1985. However, if the Congress extends the availability of FY 1985 funds, the Secretary may, at a later date, extend the fund-raising period for the FY 1985 competition.

(20 U.S.C. 1065a)

(Catalog of Federal Domestic Assistance Number 84.031—Institutional Aid Programs)

Dated: November 1, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-29153 Filed 11-5-84; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Secondary Education and Transitional Services for Handicapped Youth; Correction

AGENCY: Department of Education.

ACTION: Correction—Secondary Education and Transitional Services for Handicapped Youth program under section 625 of Part C of the Education of the Handicapped Act, as amended; Application Notice for Transmittal of New Applications for Fiscal Year 1985.

SUMMARY: On September 28, 1984 an application notice establishing closing dates for transmittal of applications for certain discretionary grant programs under the Secretary Education and Transitional Services for Handicapped Youth program was published at 49 FR 38343–38344.

On page 38344, second column, third paragraph from the top, under *Available funds,* the last sentence is changed to read "Award approval is for a period of up to 24 months".

Dated: November 1, 1984.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 84-29154 Filed 11-05-84; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Strengthening Program, Special Needs Program, and Challenge Grant Program; Application Notice for Non-Competing Continuation Awards for Fiscal Year 1985

Applications are invited for non-competing continuation awards under the Strengthening, Special Needs, and Challenge Grant Programs. These programs, collectively known as the Institutional Aid Programs, are authorized by Title III of the Higher Education Act of 1965, as amended (HEA). In particular, the Strengthening Program is authorized by sections 311–313 and 341–347 of the HEA [20 U.S.C. 1057–1059, 1066–1069c]; the Special Needs Program is authorized by sections 321–324 and 241–347 of the HEA (20 U.S.C. 1060–1063, 1066–1069c); and the Challenge Grant Program is authorized by sections 331–332 and 341–347 of the HEA (20 U.S.C. 1064–1069c).

Under these Programs, the Secretary awards development grants to eligible institutions of higher education to assist them in carrying out their long-range development plans, thereby assisting them in becoming self-sufficient. Institutions may use the funds awarded under each program to improve their academic quality and to strengthen their planning, management, and fiscal capabilities.

Closing Date for Transmittal of Applications: To be assured of consideration for funding, an application for a non-competing continuation award should be mailed or hand-delivered by January 4, 1985.

If an application for a non-competing continuation award is late, the Department may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail: An application sent by mail should be addressed to the Department of Education, Application Control Center, Attention: 84.031D (Institutional Aid Programs—Strengthening Program); 84.031E (Institutional Aid Programs—Special Needs Program); or 84.031F (Institutional Aid Programs—Challenge Grant Program), Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a private mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturdays, Sundays, and Federal holidays.

Available Funds: The Department of Education Appropriation Act, 1985, appropriated $141,208,000 for the Institutional Aid Programs in Fiscal Year 1985. Of that amount approximately $51,000,000 will be available to fund 200 non-competing continuation grants under the Strengthening Program, approximately $51,000,000 will be available to fund 170 non-competing continuation grants under the Special Needs Program, and approximately $6,400,000 will be available to fund 21 non-competing continuation grants under the Challenge Grant Program.

In accordance with section 347(c) of the HEA, the Secretary will award not less than 24 percent of the total amount available under the Strengthening Program, and not less than 30 percent of the total amount available under the Special Needs Program, for both non-competing and new grants to eligible junior and community colleges. The Department of Education Appropriation Act, 1985, also reserves $45,741,000 across all program Parts for awards to historically Black colleges and universities under the Institutional Aid Programs. Of this amount, in accordance with section 347(e) of the HEA, the Secretary will award $27,035,000 of the total amount appropriated for the Special Needs Program, including those funds reserved for the non-competing and new grants to eligible historically black institutions of higher education. These institutions include the institutions listed in the 1978 publication of the National Center for Education Statistics entitled: "Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics." (34 CFR 626.31(b))

In order to ensure that there will be enough money to fund all of the eligible non-competing continuation grants under the Strengthening and Special Needs Programs and in accordance with

§ 625.31(b)(2) of the Strengthening Program Regulations, and § 626.31(c)(2) of the Special Needs Program Regulations, the Secretary anticipates limiting the maximum award for non-renewable grants to $800,000 for the Strengthening and Special Needs Programs and limiting the maximum award for renewable grants under the Strengthening Program to $200,000. These are the same maximum annual limits that applied to grants made in Fiscal Year 1984. Accordingly, applicants under the Strengthening or Special Needs Programs should not submit budget requests in excess of these amounts. The Secretary will not accept any application containing a request in excess of these maximum amounts. Such applications will be returned. The non-competing continuation grantee may then resubmit a revised application with a budget request that does not exceed the allowable maximum amount. However, if the revised application is resubmitted later than thirty days after the closing date, the Department may lack sufficient time to review it with other non-competing continuation applications and may decline to accept it.

Applicants should prepare the FY 1985 submission based upon the activities and budget projections of the initial grant document approved by the Department. FY 1985 budget requests should not exceed the estimated projections for approved activities for the new submission.

The Secretary does not anticipate limiting the maximum grant award under the Challenge Grant Program.

Although processing of applications will proceed on these estimates and approximations, it should be noted that these estimates and approximations do not bind the Department of Education to the projected apportionment of funds among the program Parts or to a specific amount for any grant unless the amount is otherwise specified by statute or regulations.

It should be noted that, during the last two funding cycles, it was necessary to ratably reduce the final grant awards, so that the aggregate approved requests equaled the amount available and adhered to the statutory set-asides.

Application forms: Application forms for non-competing continuation awards are expected to be ready for mailing no later than November 9, 1984. They will be mailed routinely to currently funded projects. If a grantee does not receive the forms by November 19, 1984, the grantee should telephone the Division of Institutional Development at (202) 245–9091 for the Challenge Grant Program; 245–9077 for Special Needs Program, and 245–2429 for the Strengthening Program.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed eight (8) pages in length per activity. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under Control Number 1840–0113)

Applicable regulations: Regulations applicable to non-competing continuation awards are:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77 and 78; and

(b) Regulations for the Institutional Aid Programs in 34 CFR Parts 624–627.

Further information: For further information, contact: Dr. Caroline J. Gillin, Director, Division of Institutional Development, U.S. Department of Education, Room 3042, Regional Office Building 3, 400 Maryland Avenue SW., Washington, D.C., 20202. Telephone: (202) 245–9091, 245–9077, or 245–2429.

(20 U.S.C. 1051–1069c)

(Catalog of Federal Domestic Assistance Number: 84.031D—Strengthening Program 84.031E—Special Needs Program, and 84.031F—Challenge Grant Program)

Dated: October 31, 1984.

[FR Doc. 84–29151 Filed 11–5–84; 8:45 am]

BILLING CODE 4000–01–M

Public Service Education Fellowships Program; Application Notice for Fiscal Year 1985

This notice invites applications from institutions of higher education for grants to make fellowship awards under the Public Service Education Fellowships Program.

Authority for this program is contained in Part B of the Title IX of the Higher Education Act of 1965, as amended. (20 U.S.C. 1134d–1134g)

The Public Service Education Fellowships Program provides grants to institutions of higher education to support fellowships to graduate and professional study to students who demonstrate a financial need and who plan to pursue a career in public service at all levels of government and in nonprofit community service organizations. Public Service Education fellowships are intended to provide opportunities for qualified students, particularly minorities and women who traditionally have been underrepresented and underserved in these areas.

Closing date for transmittal of applications. An application for a grant must be mailed or hand-delivered by January 9, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.094C, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stampted by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) 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 not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily 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.

Available Funds: The Department of Education Appropriation Act, 1985 appropriated $2,500,000 for the Public Service Education Fellowships Program. The law and the regulations require that

a grant shall not be made to a single institution for less than $75,000. The Congress again enacted legislation overriding the $75,000 minimum grant that can be made to an institution under the statute; see § 649.11(a)(3) of the regulations.

The Secretary will give first priority to providing continuation support for fellows in their second year who are in good academic standing.

The Secretary will then allocate new fellowships to institutions receiving award.

Program information: Each institutional applicant appling for new fellowships under this Application Notice will be ranked according to the selection criteria set out in 34 CFR 649.13 governing the Public Service Education Fellowships Program.

Generally, the Secretary makes only one year grant awards to institutions allocated new fellowships. These awards would in turn cover up to twelve months of study by the fellowship recipients. Thus, any continuation support needed for students to complete degree programs beyond the one academic year period is provided the next year if sufficient funds are appropriated. However, the Secretary may provide grants for more than one year to institutions allocated new fellowships, if there are unique conditions or considerations that warrant a deviation from restricting funds to new fellowships for one year.

The Department of Education is not bound to a specific number of grants or to the amount of any grant, unless specified by statute or regulations.

Application Forms: Applications forms (OMB No. 1840–0509, Expires 11/59) and program information packages are expected to be ready for mailing by November 23, 1984, and may be obtained by writing to the Division of Higher Education Incentive Programs (Public Service Education Fellowships Program), U.S. Department of Education, (Room 3022– ROB–3), 400 Maryland Avenue, S.W. Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

The program information package is intended to aid applicants applying for a grant under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition.

The Secretary strongly urges that the narrative portion of the grant application be double-spaced and not exceed 15 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(1) Regulations governing the Public Service Education Fellowships Program, in 34 CFR Part 649.

(2) Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77 and 78.

Further Information: For further information contact Division of Higher Education Incentive Programs (Public Service Education Fellowship Program), U.S. Department of Education, (Room 3022, RPB–3), 400 Maryland Avenue S.W., Washington, DC. 20202, Telephone: (202) 245–2511.

(20 U.S.C. 1134d–1134g)

(Catalog of Federal Domestic Assistance No. 84.094C, Public Service Education Fellowships Program)

Dated: October 31, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84–29152 Filed 11–5–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF84–510–000]

Amoco Chemicals Corp. Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 31, 1984.

On September 24, 1984, Amoco Chemicals Corporation (Applicant), located at Intersection FM 2004 and FM 2917, P.O. Box 1488, Alvin, Texas 77511, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Amoco Chemicals Corporation's Chocolate Bayou Plant in Alvin, Texas. It will consist of a combustion turbine generating set with an ISO rated capacity of 37.1 MW. The Chocolate Bayou cogeneration facility is designed to burn plant fuel gas or, with modifications, fuel oil as an alternate fuel. A heat recovery steam generator designed for supplementary firing will produce 161,000 pounds/hour of 950 psig superheated steam unfired, and up to a maximum of 325,000 pounds/hour of 950 psig superheated steam with supplementary firing. A small portion of the electric power will be sold infrequently to Houston Lighting and Power Company. The steam will be used for thermal energy in the processing units at the Amoco Chemicals Chocolate Bayou Plant. The primary source of fuel for the facility is natural gas with plant fuel gas as an alternate fuel. The construction of the facility will begin approximately in January 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–29082 Filed 11–5–84; 8:45 am]

BILLING CODE 6717–01–M

Iowa Electric Light and Power Co.; Notice of Petition for Declaratory Order

October 30, 1984.

Take notice that on June 28, 1984, Iowa Electric Light and Power Company (Petitioner) filed a petition pursuant to 18 CFR 385.207 (1984) requesting that the Commission issue an order which would remove the uncertainty of the jurisdictional status of DERC Projects Nos. 8106 and 8184 pursuant to Section 23(b) of the Act, 16 U.S.C. 817. The projects are located on the Maquoketa River in Delaware County, Iowa. Correspondence concerning the petition should be addressed to: Mr. Larry Root, Vice President, Operations and Technical Service, Iowa Electric Light and Power Company, P.O. Box 351, Cedar Rapids, Iowa 52406, and Mr. Thomas J. Pitner, General Counsel, Iowa Electric Light and Power Company, P.O. Box 351, Cedar Rapids, Iowa 52406.

As described in the petition, the petitioner would comingle 99% of the power produced at both sites with its existing general power supply. The remaining 1% would be used to operate the projects.

The Manchester Mills Dam Project No. 8106–000 currently consists of: (a) A concrete dam, 180 feet long and 12 feet high; (b) the concrete substructure of the powerhouse that would contain the water turbine remains; (c) a retired generator having a maximum output of 260 kW; and (d) a retired turbine having an installed capacity of 370 horsepower. The project would be rehabilitated to its previous capacity utilizing a maximun head of 11 feet with a design flow of 330 cubic feet per second.

The Quaker Mills Dam Project No. 8184–000 currently consists of: (a) a concrete dam, 167 feet long and 12 feet high; (b) the concrete substructure of the powerhouse that would contain the water turbine remains; (c) a retired generator having a maximum output of 260kW; and (d) a retired turbine having an installed capacity of 370 horsepower. The project would be rehabilitated to its previous capacity utilizing a maximum head of 11 feet with a design flow of 330 cubic feet per second.

Preliminary permits were issued to Iowa Hydropower Development Corporation for Projects Nos. 8106 and 8184 on August 20, 1984, and September 4, 1984, respectively, to study the feasibility of developing hydropower at these sites.

Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all the protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 7, 1984. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–29083 Filed 11–5–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–505–000]

Multitrade Group, Inc.; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 31, 1984.

On September 24, 1984, Multitrade Group, Inc., (Applicant) of P.O. Box 717 Ridgeway, Virginia 24148, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Burlington Industries' Pioneer Plant in the City of Burlington, North Carolina. The facility will consist of one 200,000 lbs/hr boiler at 1500 PSI and one 20 MW steam turbine generator set. Part of the steam will be sold to Burlington Industries to process textile products. The electrical power production capacity of the facility will be 20 MW. The primary energy source will be biomass in the form of wood waste supplemented by coal. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be serve on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–29084 Filed 11–5–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–53–000]

Pacific Power & Light Company; Notice of Filing

October 31, 1984.

Take notice that on October 18, 1984, PacifiCorp, doing business as Pacific Power & Light Company (Pacific), tendered for filing A Notice of Succession giving formal notification of Pacific Power & Light Company's name change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–29085 Filed 11–5–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–61–000]

Pacific Gas and Electric Co.; Notice of Filing

October 31, 1984

The filing Company submits the following:

Take notice that on October 17, 1984, Pacific Gas and Electric Company (PG&E) tendered for filing information requested in reference to the thermal capacity charges for 1982 and 1983 to the Interchange Agreement with Western Area Power Administration (WAPA) and PG&E.

The actual 1982 cost and supporting data was submitted; according to PG&E, information on the 1983 actual thermal capacity charge is not yet available.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-29086 Filed 11-5-84; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1916 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

E.D.R. International, Inc., 301 W. Park Drive, #206, Miami, FL 33172, Officer: Eduardo Del Riego, Sole Officer

Calabresi International Incorporated, 203 Carondelet Street, Suite No. 1027, New Orleans, LA 70130, Officers: Anthony W. Calabresi, President; Flora Calabresi, Secretary/Treasurer

By the Federal Maritime Commission.

Dated: November 1, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-29110 Filed 11-5-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barclays USA Inc. and Barclays Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that 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.

Comments regarding the application must be recieved at the Reserve Bank indicated or the offices of the Board of Governors not later than Novembver 26, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays USA Inc.* and *Barclays Corporation*, both of New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Barclays Bank of California, San Francisco, California, and Barclays Bank of New York, N.A., New York, New York. Barclays USA Inc. has also applied to acquire BarclaysAmericanCorporation, Charlotte, North Carolina ("BAC"), thereby engaging in the following activities: (a) The operation of a consumer finance business, including without limitation: (1) Direct installment notes (sales finance), such as loans made to individuals for personal, family or household purposes, including loans secured by real estate, (2) the purchase on a discounted basis of contracts and related security agreements arising principally from the sale by dealers of titled goods (including automobiles and mobile homes) and non-titled goods (including furniture, television sets and appliances, travel trailers and campers, and boat and marine equipment), (3) servicing loans and other extensions of credit for its own account and the account of others, and (4) related wholesale financing consisting of financing dealers' inventories of automobiles, mobile homes and other chattels; (b) the operation of a credit card business, including without limitation the creation or acquisition of credit card debt and the issuance by BAC or a subsidiary of its own credit card; (c) the operation of a mortgage lending business, including first and second mortgage loans on residences and commercial properties as well as the servicing for a fee of loans originated by others or by BAC and its subsidiaries and sold in the secondary market; (d) the operation of a commercial finance and factoring business, including loans secured by receivables, inventory, equipment and real estate. Commercial finance involves the making of revolving credit loans to clients secured generally by assignments of accounts receivable and/or liens on inventory. Factoring involves the purchase of accounts receivable on a nonrecourse basis from clients which are manufacturers and distributors; (e) the operation of a lease finance business, including lease financing of both personal and real property, in each case subject to the limitations set forth in § 225.25(b)(5) of Regulation Y. BAC's leasing activities involve the direct leasing of property to the customer, whether real estate or equipment, such as motor vehicles, aricraft, machinery and others equipment; (f) the sale as agent through offices of BAC and its subsidiaries of credit insurance directly related to extensions of credit by BAC and its subsidiaries, including decreasing term credit life insurance, credit accident and health insurance, credit employment insurance and credit property insurance designed to protect the borrower's property which serves as collateral for loans from BAC and its subsidiaries. The expansion of BAC's insurance agency business will be limited by applicable law, including the Garn-St Germain Depository Institutions Act of 1982; (g) underwriting or reinsuring credit life and credit accident and health insurance sold by BAC and its subsidiaries as agent; (h) the issuance and sale at retail of money orders having a face value not exceeding $1,000 (or such other amount as may from time to time be permitted by the Federal Reserve Board by regulation) through consumer finance offices of BAC and its subsidiaries; and (i) the issuance and sale at retail of travellers checks at consumer finance offices of BAC and its subsidiaries.

Board of Governors of the Federal Reserve System, October 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-29102 Filed 11-5-84; 8:45 am]

BILLING CODE 6210-01-M

National Penn Bancshares, Inc., et al.; Formations of; Acquisition by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 29, 1984.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bankshares, Inc.*, Boyertown, Pennsylvania; to acquire 20 percent of the voting shares of Chestnut Hill National Bank, Philadelphia, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Devon Bancorp, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 89.49 percent of the voting shares of Devon Bank, Chicago, Illinois.

2. *Royce Corporation*, Council Bluffs, Iowa; to acquire 96 percent of the voting shares of The First National Bank of Fonda, Fonda, Iowa.

3. *Whitewater Bankcorp, Inc.*, Whitewater, Wisconsin; to acquire 85.6 percent of the voting shares of Palmyra, Palmyra, Wisconsin.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Cross County Bancshares, Inc.*, Wynne, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Cross County Bank, Wynne, Arkansas.

4. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Commercial Landmark Corporation*, Muskogee, Oklahoma; to acquire 42 percent of the voting shares of Town & Country Bank, Bixby, Oklahoma.

2. *Mancos Bancorporation, Inc.*, Mancos, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Mancos State Bank, Mancos, Colorado.

Board of Governors of the Federal Reserve System, October 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-29103 Filed 11-5-84; 8:45 am]

BILLING CODE 6210-01-M

The Chase Manhattan Corp. and Chase Manhattan National Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise, noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation and Chase Manhattan National Corporation*, both of New York, New York, to engage *do novo* through their subsidiary, Linicoln First Mortgage, Inc., Rochester, New York, in the leasing of personal or real property.

2. *Republic New York Corporation*, New York, New York; *Saban, S.A.*, Panama City, Republic of Panama; *Republic Holding, S.A.*, City of Luxembourg, Grand Duchy of Luxembourg; *Trade Development Finance (Netherlands Antilles), N.V.*, The Netherlands Antilles; and *Trade Development Holland Holding B.V.*, Amsterdam, The Netherlands; to engage *de novo* through their subsidiary, Republic New York Trust Company of Florida, N.A., Miami, Florida, to perform trust services, including estate administration; testamentary trust administration; inter vivos trust administration; investment advisory and management services; custodianship; guardianship (property); and escrow and life insurance trust administration. These activities would be conducted in the State of Florida.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commerce Bancshares, Inc.*, Kansas City, Missouri; to engage *de novo* through its subsidiary, Commerce Mortgage Corp., Kansas City, Missouri, in making, acquiring, and servicing residential real estate loans for its own account and for the account of others. These activities would be performed in the State of Missouri and adjacent states.

Board of Governors of the Federal Reserve System, October 31, 1984.

James McAfee,

Associate Secretary of the Board

[FR Doc. 84-29104 Filed 11-5-84; 8:45 am]

BILLING CODE 6210-01-M

Holding Company of Picayune, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 26, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Holding Company of Picayune,* Picayune, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of First National Corporation of Picayune, Picayune, Mississippi, thereby indirectly acquiring First National Bank of Picayune, Picayune, Mississippi.

2. *Peoples Bancorp, Inc.,* Manchester, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Peoples Bank and Trust Company, Manchester, Tennessee.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Keekins Corporation,* Downers Grove, Illinois; to become a bank holding company by acquiring 76.6 percent of the voting shares of Citizens National Bank of Downers Grove, Downers Grove, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Eklhart Financial Company,* Elkhart, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Elkhart, Elkhart, Kansas.

2. *First Beemer Corporation,* Beemer, Nebraska; to acquire at least 80 percent of the voting shares of American State Bank, Homer, Nebraska.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Capitalbank Corporation,* San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First City Bank-Central Park, San Antonio, Texas.

2. *Southwest Bankers, Inc.,* San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of San Antonio Bancshares, Inc., San Antonio, Texas, thereby indirectly acquiring Bank of San Antonio, San Antonio, Texas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Cupertino National Bancorp,* Cupertino, California; to become a bank holding company by acquiring 100 percent of the voting shares of Cupertino National Bank, Cupertino, California (in organization).

Board of Governors of the Federal Reserve System, October 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-29105 Filed 11-5-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming of Certain Lands as Part of the Reservation of the Pueblo of Laguna, NM

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

On October 19, 1984, pursuant to authority contained in section 7 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the following described lands, known as the Polocarpio Armijo Ranch located in Sandoval County, and the Eidson Ranch located in Valencia County, both counties in New Mexico, were added to and made a part of the Reservation of the Pueblo of Laguna.

Polocarpio Armijo Ranch Lands

A. The tract of land located in Sandoval County, New Mexico, being and comprising the Easterly 1,326.63 acres of the AGUA SALADA GRANT and being more particularly described as follows:

Beginning at the NE corner No. 1 of the tract herein set forth, being identical with the NE corner of the AGUA SALADA GRANT and running thence S. 000°17' W., 16,468.12 feet to the SE corner of said AGUA SALADA GRANT and the SE corner No. 2 of the tract herein set forth; thence W. 2,645.08 feet to the one-half (½) Mile Marker on the S. boundary of the AGUA SALADA GRANT and corner No. 3 of the tract herein set forth: thence S. 89°50' W., 713.36 feet to the SW corner No. 4 of the tract herein set forth; thence N. 17,555.08 feet to a point on the N. boundary of said AGUA SALADA GRANT and the NW corner No. 5 of the tract herein set forth; thence along said N. boundary of the AGUA SALADA GRANT as follows: N. 15°02' E., 170.00 feet to MC (Meander Cor) 49 and corner No. 6 of the tract herein set forth; thence S. 70°43' E., 594.00 feet to MC (Meander Cor) 50 and corner No. 7 of the tract herein set forth; thence S. 59°43' E., 600.60 feet to MC (Meander Cor) 51 and corner No. 8 of the tract herein set forth; thence S. 65°13' E., 1,538.46 feet to MC (Meander Cor) 52 and corner No. 9 of the tract herein set forth; thence S. 83°28' E., 925.70 feet to the NE corner No. 1 and place of beginning.

B. The tracts of land located in Sandoval County, New Mexico, known as the Benito Ranch, containing 918.85 acres, and more particularly described as follows:

The South Half of the South Half (S/2S/2) of Section Four (4); Lots One (1), Two (2), and Three (3) of Section Ten (10), all in Township 12 North, Range 2 West;

The South Half of the North Half (S/2N.2), the Northeast quarter of the Northeast quarter (NE/4NE/4), the Northwest quarter of the Southeast quarter (NW/4SE/4), and the North Half of the Southwest quarter (N/2SW-4) of Section Twenty-eight (28);

The North Half of the Southeast quarter (N/2SE/4), the Southeast quarter of the Southeast quarter (SE/4SE/4) and Lot Four (4) of Section Thirty (30);

Lots One (1), Two (2), Three (3), and Four (4) of Section Thirty-four (34), all in Township 13 North, Range 2 West, N.M.P.M.

Eidson Ranch Land

C. The tract of land located in Valencia County, New Mexico, known as the Eidson Ranch, containing 6898.72 acres, and more particularly described as follows:

All of Section 17, 18, 19, 20, 21, 22, 27, 29, 31, and 33, and a portion of the NW¼ and S½ of Section 78, and the W½SW¼ and the SW¼NW¼ of Section 30, Township 8 North, Range 3 West, New Mexico Principal Meridian.

Said lands are subject to prior conveyances and reservations of the minerals under described land as shown of record and are subject to any patent reservations, easements and rights-of-ways of record.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-29149 Filed 11-5-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[C-35468]

Modification of Original Realty Action: Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Modification of original Notice of Realty Action (C-35468).

SUMMARY: This notice modifies the original Notice of Realty Action C-35468 published in the **Federal Register** on June 27, 1984 on pages 26312 and 26313. The notice pertains to the sale of lots 59, 60, 61, and 70 of Sec. 31, T. 11 S., R. 79 W., Sixth Principal Meridian, Colorado.

The publication of this notice in the **Federal Register** shall segregate the public lands described in the original Notice of Realty Action from all appropriations under the General Mining Laws. This segregation shall terminate upon: (1) Issuance of patent or other document of conveyance of such lands, (2) upon publication in the **Federal Register** of a termination of the segregation, or (3) 270 days from the date of publication of this modification, whichever occurs first. This is done under the authority of 43 CFR 2711.1.

Publication of this notice shall also terminate the Small Tract classification (C-0124350) that presently exists on these tracts. All other terms and conditions of the original notice remain in full force and effect.

Donnie Sparks,

District Manager.

[FR Doc. 84-29101 Filed 11-5-84; 8:45 am]

BILLING CODE 4310-JB-M

Arizona Strip District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Arizona Strip District Grazing Advisory Board will be held at 8 a.m. on Thursday, November 29, 1984 at the Sugar Loaf Restaurant, 290 East St. George Blvd., in St. George, Utah.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 196 East Tabernacle, St. George, Utah 84770 (801/673-3545).

SUPPLEMENTARY INFORMATION: Included on the agenda are the election of a chairman and vice chairman, discussion of projects and project maintenance for fiscal year 1985, and use of Board funds.

Dated: October 29, 1984.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 84-29108 Filed 11-5-84; 8:45 am]

BILLING CODE 4310-84-M

[C-39308]

Colorado; Proposed Withdrawal; Opportunity for Public Hearing

Correction

In FR Doc. 84-27428, beginning on page 40673 in the issue of Wednesday, October 17, 1984, make the following corrections:

1. On page 40673, second column, the date appearing in the DATE paragraph should read, "January 15, 1985".

2. Also on page 40673, third column, footnote reference [1] should appear after the semi-colon at the end of the second line of the description for "T. 5 S., R. 77 W.".

BILLING CODE 1505-01-M

National Park Service

Lake Clark National Park and Preserve; Availability of a Final Environmental Assessment/General Management Plan, and a Finding of No Significant Impact (FONSI)

SUMMARY: This notice announces the availability of the final environmental assessment/general management plan, and a finding of no significant impact (FONSI) for Lake Clark National Park and Preserve.

The draft environmental assessment/general management plan was made available for public and Conservation System Unit review and comments were received and considered.

It is the National Park Service's decision to select the alternative which appears as part of the final general management plan to serve as the guideline for the managment of Lake Clark National Park and Preserve for the next five to ten years.

ADDRESSES: Public reading copies of the environmental assessment/general management plan will be available for review at the following locations:

Parks and Forests Information Center, 2525 Gambell Street, Anchorage, Alaska 99503

Headquarters, Lake Clark National Park and Preserve, 701 C Street, Box 61, Anchorage, Alaska 99513

Department of the Interior, Central Library, Washington, D.C. 20240

Interior Resources Library, Federal Building, 701 C Street, Anchorage, Alaska 99513

Copies of the FONSIs are available upon request from: National Park Service, Alaska Regional Office, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503-2892.

Dated: October 29, 1984.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-29148 Filed 11-5-84; 8:45 am]

BILLING CODE 4310-70-M

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 October 26, 1984. Pursuant to section 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, DC 20243. Written comments should be submitted by November 21, 1984.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Denver County

Denver, *Ford, Justina, House,* 3091 California St.

CONNECTICUT

Fairfield County

Fairfield, *Sturges, Jonathan, House,* 449 Mill Plain Rd.

Hartford County

Glastonbury, *South Glastonbury Historic District,* High, Hopewell, Main and Water Sts.

FLORIDA

Levy County

Cedar Key, *Island Hotel,* 224 2nd St.

Seminole County

Sanford, *Sanford Grammar School*, 7th and Myrtle Sts.

INDIANA

Carrol County

Cutler vicinity, *Adams Mill*, Off SR 50

Washington County

Salem, *Washington County Jail and Sheriff's Residence*, 106 S Main St.

KENTUCKY

Ballard County

Wickliffe, *Wickliffe (King Mounds) Site 15 BA 4*,

Fulton County

Hickman, *Sassafras Ridge (Site 15 Fu 3)*,

Grayson County

Leitchfield, *Court Square Historic District*, Court House Square between Walnut and Market Sts.

Logan County

Auburn, *McCutchen Meadows*, P.O. Box 466

Mason County

Maysville, *Point Au View*, 721 Hillcrest Rd.

MAINE

Cumberland County

Portland, *Portland High School*, 284 Cumberland Ave.

Washington County

Calais, *Jellison, Theodore, House*, River Rd.

NEW YORK

Richmond County

Staten Island, *Gardiner-Tyler House*, 27 Tyler St.

Suffolk County

Cutchogue, *Tuthill, David, Farmstead*, New Suffolk Lane

Shelter Island Heights, *Union Chapel*, The Grove

OKLAHOMA

Mayes County

Pryor vicinity, *Vann, Daniel Webster, House*, SR 20

PENNSYLVANIA

Cumberland County

Boiling Springs, *Boiling Springs Historic District*, Roughly bounded by High and First Sts., Boiling Springs Lake, and Yellow Britches Creek

Montgomery County

Norristown, *Central Norristown Historic District*, Roughly bounded by Stoney Creek, Walnut, Lafayette, and Fornace Sts.

West Norristown, *West Norristown Historic District*, Roughly bounded by E. Stoney Creek, W. Selma, and N. Elm Sts.

RHODE ISLAND

Providence County

Pawtucket, *Crandall, Lorenzo, House*, 221 High St.

SOUTH CAROLINA

Aiken County

Aiken, *Aiken Mile Track (Aiken Winter Colony TR)*, Banks Mill Rd.

Aiken, *Aiken Training Track (Aiken Winter Colony TR)*, Two Notch Rd.

Aiken, *Aiken Winter Colony Historic District I (Aiken Winter Colony TR)*, Off U.S. 1/78

Aiken, *Aiken Winter Colony Historic District II (Aiken Winter Colony TR)*, Roughly bounded by RR track, Colleton and 3rd Aves., Laurens, South Boundary, and Marion Sts.

Aiken, *Aiken Winter Colony Historic District III (Aiken Winter Colony TR)*, Roughly bounded by Edgefield Ave., Highland Park Dr., Fauburg, and Greenville St.

Aiken, *Court Tennis Building (Aiken Winter Colony TR)*, Newberry and Park Sts.

Aiken, *St. Thaddeus Episcopal Church (Aiken Winter Colony TR)*, Pendleton and Richland Sts.

Aiken, *Whitehall (Aiken Winter Colony TR)*, 902 Magnolia St.

Fairfield County

Jenkinsville vicinity, *Glenn, Dr. John, House (Fairfield County MRA)*, SC 215

Jenkinsville vicinity, *High Point (Fairfield County MRA)*, SC 215

Jenkinsville, *Mayfair (Fairfield County MRA)*, Off SC 215

Monticello, *Monticello Methodist Church (Fairfield County MRA)*, Off SC 215

Monticello, *Monticello Store and Post Office (Fairfield County MRA)*, Off SC 215

Ridgeway vicinity, *Beard, James, House (Fairfield County MRA)*, W of Ridgeway

Ridgeway vicinity, *Camp Welfare (Fairfield County MRA)*, Off U.S. 21

Ridgeway vicinity, *Hunter House (Fairfield County MRA)*, NE of Ridgeway

Ridgeway vicinity, *Mount Hope (Fairfield County MRA)*, SC 34

Ridgeway vicinity, *Vaughn's State Coach Stop (Fairfield County MRA)*, SC 34

Winnsboro vicinity, *New Hope A.R.P. Church and Session House (Fairfield County MRA)*, NW of Winnsboro

Winnsboro vicinity, *Albion (Fairfield County MRA)*, W of Winnsboro off SC 34

Winnsboro vicinity, *Balwearie (Fairfield County MRA)*, W of Winnsboro of SC 34

Winnsboro vicinity, *Brice, Dr. Walter, House and Office (Fairfield County MRA)*, NW of Winnsboro

Winnsboro vicinity, *Concord Presbyterian Church (Fairfield County MRA)*, U.S. 321

Winnsboro vicinity, *Furman Institution Academic Building (Fairfield County MRA)*, SW of Winnsboro

Winnsboro vicinity, *Furman Institution Faculty Residence (Fairfield County MRA)*, SW Of Winnsboro

Winnsboro vicinity, *Hunstanton (Fairfield County MRA)*, U.S. 321

Winnsboro vicinity, *Libert Universalist Church and Feasterville Academy Historic District (Fairfield County MRA)*, SC 215

Winnsboro vicinity, *Old Stone House (Fairfield County MRA)*, Off SC 34

Winnsboro vicinity, *Rockton and Rion Railroad Historic District (Fairfield County MRA)*, S of Winnsboro from SC 34 W to SC 213

Winnsboro vicinity, *Shivar Springs Bottling Company Cisterns (Fairfield County MRA)*, W of Winnsboro

Winnsboro vicinity, *The Oaks (Fairfield County MRA)*, SC 213

Winnsboro vicinity, *Tocaland (Fairfield County MRA)*, Off SC 34

Winnsboro vicinity, *White Oak Historic District (Fairfield County MRA)*, Off U.S. 321

TENNESSEE

Davidson County

Nashville vicinity, *Hows-Madden House*, U.S. 70

Gibson County

Trenton, *Peabody High School*, S. College St.

Giles County

Pisgah, *Pisgah United Methodist Church and Cemetery*, Pisgah Rd.

[FR Doc. 84-29147 Filed 11-5-84; 8:45 am]

BILLING CODE 4310-70-M

Final Wild and Scenic River Study; Final Environmental Impact Statement Availability; Palm Beach and Martin Counties, FL

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: This notice announces the availability of a final environmental impact statement (EIS) for a study of the eligibility and suitability of including the Loxahatchee River in the National Wild and Scenic Rivers System.

DATES: The 30-day no-action period following the Environmental Protection Agency's notice of availability of the final EIS will end December 6, 1984.

ADDRESSES: Public reading copies of the final EIS will be available for review at the following locations.

Office of Public Affairs National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240 (Telephone 202-343-6843)

Rivers and Trails Division, National Park Service, Southeast Region, 75 Spring Street, SW., Atlanta, GA 30303 (Telephone 404-221-5838)

A limited number of copies of the statement are available on request from Sharon C. Keene, Chief, Rivers and Trails Division, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, GA 30303.

SUPPLEMENTARY INFORMATION: The Loxahatchee Wild and Scenic River Study was conducted pursuant to the Wild and Scenic Rivers Act, Pub. L. 90-542, as amended. The National Park Service has determined that a 7.5-mile segment of the river is eligible for

inclusion in the National System based on its outstandingly remarkable ecological, fish and wildlife, and recreational values. The National Park Service proposed that this eligible segment be included as a State-administered component of the National Wild and Scenic Rivers System. Under the proposed concept plan, management of the Loxahatchee River would be a cooperative effort by the State of Florida, the South Florida Water Management District and Palm Beach and Martin Counties.

Three alternatives were developed and evaluated in accordance with the National Environmental Policy Act (NEPA). Alternative A is the recommended proposal to include the 7.5-mile eligible segment of the river as a State-administered component of the National System. Alternative B involves designation of a 7.5-mile segment of the river as a State-administered component of the National System but provides additional protection in the corridor as well as restoration of the Loxahatchee Slough. Alternative C is the No Action or Existing Trends alternative and characterizes the future conditions expected to occur in the study area without a formal management plan or designation as a wild and scenic river. This will not necessarily be the President's proposal to the Congress or the Secretary's recommendation to the President.

Further information can be obtained from John Haubert (202) 343–4240.

Dated: October 30, 1984.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 84–29163 Filed 11–5–84; 8:45 am]

BILLING CODE 4310–70–M

Cape Krusenstern National Monument Subsistence Resource Commission; Meeting

AGENCY: National Park Service Alaska Region.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Cape Krusenstern National Monument Subsistence Resource Commission. The following agenda items will be discussed:

1. Minutes of the last meeting.
2. ANILCA Title VII workshop with Mr. Don Mitchell.
3. Discussion of existing and possible changes in hunting regulations:
   a. Species hunted.
   b. Bag limits.
   c. Seasons.
   d. Methods and means.
4. Update of U.S. Fish and Wildlife Service on spring waterfowl hunting.
5. Local Hire Program.

DATE: The meeting will begin at 9:00 a.m. on November 29, 1984, and conclude the afternoon of the same day.

ADDRESS: The meeting will be held in the NANA Conference Room, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Mack Shaver, Superintendent, Cape Krusenstern National Monument, P.O. Box 287, Kotzebue, Alaska 99752.

SUPPLEMENTARY INFORMATION: The Cape Krusenstern National Monument Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act. Pub. L. 96–487.

Dated: October 29, 1984.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84–29165 Filed 11–5–84; 8:45 am]

BILLING CODE 4310–70–M

Kobuk Valley National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service Alaska Region.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Kobuk Valley National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Minutes of the last meeting.
2. ANILCA Title VIII workshop with Mr. Don Mitchell.
3. Discussion of existing and possible changes in hunting regulations:
   a. Species hunted.
   b. Bag limits.
   c. Seasons.
   d. Methods and means.
4. Update of U.S. Fish and Wildlife Service on spring waterfowl hunting.
5. Local Hire Program.

DATE: The meeting will begin at 9:00 a.m. on November 29, 1984, and conclude the afternoon of the same day.

ADDRESS: The meeting will be held in the NANA Conference Room, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Mack Shaver, Superintendent, Kobuk Valley National Park, P.O. Box 287, Kotzebue, Alaska 99752.

SUPPLEMENTARY INFORMATION: The Kobuk Valley National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub L. 96–487.

Dated: October 29, 1984.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84–29164 Filed 11–5–84; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–18; (Sub-63X)]

The Chesapeake and Ohio Railway Co.; Discontinuance of Service Exemption in Saginaw County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the discontinuance of service by The Chesapeake and Ohio Railway Company over 0.5 miles of track owned by Grand Trunk Western Railroad Company in Saginaw, Saginaw County, MI.

DATES: This exemption is effective on December 6, 1984. Petitions for reconsideration must be filed by November 26, 1984. Petitions for stay must be filed by November 16, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB–18 (Sub-No. 63X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Rene J. Gunning, Suite 2204, 100 N. Charles St., Baltimore, MD 21201

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll free (800) 424–5403.

Decided: October 30, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-29109 Filed 11-5-84; 8:45 am]

BILLING CODE 7035-01-M

[Case No. 71192]

Motor Carriers; Collective Ratemaking Procedures: Niagara Frontier Tariff Bureau, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: The Commission voted, on September 12, 1984, to reject four tariff supplement proposals filed by Niagara Frontier Tariff Bureau, Inc. Each proposed tariff was found to be a single-line rate proposal where collective activity was improperly initiated. This decision explains why each proposed tariff was rejected. The decision also interprets relevant statutory provisions, and sets forth the appropriate standard to be used by motor carrier rate bureaus when processing future single-line rate proposals.

EFFECTIVE DATE: This decision is effective November 6, 1984.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rothstein, (202) 275-7912;

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision which is available for inspection and copying at the Interstate Commerce Commission, 12th St. and Constitution Ave., N.W., Washington, DC, 20423, or may be purchased from TS Infosystems, Inc., Room 2227, Interstate Commerce Commission Building; or call toll-free (800) 424-5403; or (202) 289-4357 in the Washington, DC, metropolitan area.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: October 25, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Strenio concurred in the result with a separate expression. Commissioner Lamboley did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-29106 Filed 11-05-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council Committees; Meetings and Agenda

The regular fall meetings on committees of the Labor Research Advisory Council will be held on November 27, 28, and 29. The meetings will be held in Room N-3437, C&D, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members.

The schedule and agenda of the meetings are as follows:

Tuesday, November 27

9:30 a.m.—Committee on Foreign Labor Conditions

Status of Work on International Comparison of Labor Statistics:

1. Employment and Unemployment
2. Compensation
3. Productivity and Labor Costs

10:30 p.m.—Committee on Productivity, Technology, and Economic Growth

1. *Economic Growth*
   (a) Discussion of next round of projections to 1995
   (b) Other Reports on
   (1) Occupational mobility
   (2) How workers receive training
   (3) Review of accuracy of projections to 1980
2. *Productivity*
   (a) Work on Government Productivity Measurement
   (b) Multifactor Productivity Measurement in Steel and Autos
   (c) Technology Studies

Tuesday, November 27

1:30 p.m.—Committee on Wages and Industrial Relations

1. Review of Work in Progress
2. New Area Sample and Definitions for the Area Wage Survey Program
3. Service Sector Expansion for the Employment Cost Index
4. Other Business

Wednesday, November 28

9:30 a.m.—Committee on Prices and Living Conditions

1. Development of Service Sector Price Measures
2. Status Report on Consumer Price Indexes and Consumer Price Index Revision
3. Publication Plans for Consumer Expenditures
4. Other Business

1:30 p.m.—Committee on Employment Structure and Analysis

1. Report on status of developmental programs:
   (a) Plant closing—permanent mass layoff
   (b) Local area unemployment statistics methodology
   (c) January 1984 dislocated workers survey
   (d) Introduction of Current Population Survey tabulations of union/nonunion data
2. Special reports:
   (a) Implementation of Census/BLS trade impact report program
   (b) Collection of revised data in establishment survey
   (c) Survey of Income and Program Participation definitions
   (d) Status of the temporary help industry

Thursday, November 29

9:30 a.m.—Committee on Occupational Safety and Health Statistics

1. Results of OSH 1983 Annual Survey
2. Recent and Planned Activities: Work Injury Reports (WIR)
3. Recent Developments in Recordkeeping/ Guidelines
4. Plans for Quality Measurement
5. Status of FY 1985 Budget and State Grants
6. Recent and Planned Activities: Supplementary Data System (SDS)

The meetings are open. It is suggested that persons planning to attend as observers contact Joseph P. Goldberg, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523-0001.

Signed at Washington, D.C. this 26th day of October 1984.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 84-29169 Filed 11-5-84; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Federal-State Unemployment Compensation Program; Certifications Under the Federal Unemployment Tax Act for 1984

On October 31, 1984, the Under Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., thereby enabling employers who make contributions to State unemployment funds to obtain certian cerdits for their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and the certifications are printed below.

Dated: October 31, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary of Labor.

October 31, 1984.

Honorable Donald T. Regan,

Secretary of the Treasury, Washington, D.C. 20220

Dear Mr. Secretary: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending October 31, 1984. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1954, and the other is required with respect to additional tax credit by Section 3303 of the Code.

Puerto Rico and the Virgin Islands are included in the Section 3304 certification but not the Section 3303 certification. Certification for additional tax credit is not necessary because the unemployment compensation laws of those two jurisdictions did not permit reduced rates of contributions to employers in 1984. The certifications are for the maximum credits allowable under Section 3302 of the Code.

Please note that the State of Montana and its unemployment compensation law is not included in the two certifications because of my findings that the law of Montana does not contain each of the provisions required for State unemployment compensation laws by Section 3304(a) of the Internal Revenue Code of 1954. I am therefore, constrained to omit this State and its law from the certifications, although I am precluded from withholding those certifications at the present time by Section 3310(d) of the Code. Omitting this State from the certifications, therefore, does not constitute a present withholding of the certifications with respect to this State.

Please also note that the State of Minnesota is not included in the Section 3303 certification because of my findings that the law of Minnesota contains impermissible reduced rates of contributions to employers in 1984. I am, therefore, constrained to omit this State from the Section 3303 certification, although I am precluded from withholding this certification at the present time by Section 3310(d) of the Code. Omitting this State from the Section 3303 certification, therefore, does not constitute a present withholding of that certification with respect to this State.

I will notify you further when final decisions are made regarding the 1984 certifications with respect to those States. In the meantime, no action should be taken which will preclude giving effect to the certifications or withholding the certifications until final decisions are made.

Sincerely,

Ford B. Ford.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1954

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1984, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under section 3302(a) of the Code.

Signed at Washington, D.C. this 31st day of October, 1984.

Ford B. Ford,

Under Secretary of Labor.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1954

In accordance with the provisions of Paragraph (1) of section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to Paragraph (3) of section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1984:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Mississippi
Missouri
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under section 3302(b) of the Code.

Signed at Washington, D.C. this 31st day of October, 1984.

Ford B. Ford

Under Secretary of Labor.

[FR Doc. 84-29171 Filed 11-5-84; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,409]

Bata Shoe Co., Inc., Elkins, WV; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 13, 1984 in response to a worker petition received on July 29, 1984 which was filed by three workers on behalf of workers at Bata Shoe Company, Incorporated, Elkins, West Virginia.

An active certification covering the petitioning group of workers remains in effect (TA-W-13,782). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 29th day of October 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-29170 Filed 11-5-84; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-84-198-C]

H. & T. Coal Co., Petition for Modification of Application of Mandatory Safety Standard

H. & T. Coal Company, Box 315A, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Big Rock Drift (I.D. No. 36-07567) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are non-existant for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quality of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

9. Petitioner states that the alternate method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 6, 1984. Copies of the petition are available for inspection at that address.

Dated: October 31, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-29172 Filed 11-5-84 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-202-C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Pyro No. 9 Slope, William Station (I.D. No. 15-13881) located in Webster County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries.

2. As an alternate method, petitioner proposes to drive a 4-entry system for longwall development. Except for the first set of 4 entries, which will be driven with the belt isolated from the intake and return entries and no track installed, petitioner proposes to use the left-hand entry (No. 1) for the conveyor belt during development of the entries. This entry will be ventilated by a separate split of return air. Continuous mining machines equipped with scrubbers will be used in development. Once the entries are driven to the necessary depth to establish the longwall face, all air from the headgate entries will be dumped into the bleeder entries; the tailgate entries will be the main intake entries for the longwall face.

3. In support of the proposed alternate method, petitioner proposes to install a low-level carbon monoxide fire detection device with specific conditions in the belt entry.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 6, 1984. Copies of the petition are available for inspection at that address.

Dated: October 30, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-29173 Filed 11-5-84; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

Advisory Council on Employee Welfare and Pension Benefit Plans; Change of Date and Place of Meeting

The meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans, originally scheduled for November 14, 1984, a notice of which was previously published on page 42807 in the **Federal Register** on Wednesday, October 24, 1984 (FR Doc. 84-28079) has been changed to 10:00 a.m., December 5, 1984, in the Ticonderoga Room, Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, D.C.

The purpose of the meeting is to hold a working session of the National Pension Forum of the ERISA Advisory Council. The National Pension Forum, constituted by the Secretary of Labor, is a bipartisan, coordinated effort between the Labor Department and varied constituencies to examine the Department's history and effectiveness in administering ERISA. The objective of the National Pension Forum is to draft a report for the Secretary of Labor concerning the discharge by the Department of Labor of its obligations under Title I of ERISA, together with suggestions for future administrative and legislative changes in the areas of regulations, enforcement, research and ERISA jurisprudence.

Individuals or organizations wishing to submit written statements on any aspect of ERISA should send 50 copies to Edward F. Lysczek, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room S4522, 200 Constitution Avenue, NW., Washington, D.C. 20210. Papers will be accepted and included in the record of the meeting if received on or before November 30, 1984.

Signed at Washington, D.C., this 31st day of October 1984.

Robert A. G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 84-29126 Filed 11-5-84; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Change of Location and Hours of Operation of the Office of the Clerk of the Board for the Filing of Pleadings and Documents

AGENCY: Merit Systems Protection Board.

ACTION: Notice of change of location and hours of operation of the Office of the Clerk of the Board for the filing of pleadings and documents with the Board.

SUMMARY: The Board announces a change in the location and hours of operation of the Office of the Clerk of the Board at MSPB Headquarters with respect to the filing by hand of pleadings and documents with the Board. Pleadings and documents to be filed with the Board shall be delivered to the Office of the Clerk of the Board, Room 800, at MSPB Headquarters, 1120 Vermont Avenue, N.W., Washington, D.C. The Office accepts pleadings and documents for filing each official business day, Monday through Friday, from 8:30 A.M. to 5:00 P.M.

EFFECTIVE DATE: October 29, 1984.

ADDRESS: Office of the Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Stephen E. Manrose, Acting Clerk of the Board, 653–7200.

Dated: October 31, 1984.

For the Board.

Stephen E. Manrose,

Acting Clerk of the Board.

[FR Doc. 84–29097 Filed 11–5–84; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Notice of Future Meeting Dates

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold meetings on the days listed below in calendar year 1985. All the meetings will be held in Washington, D.C. except for the November meeting which will be held in San Diego, CA. Exact times and locations will be announced at a later date.

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 Public Law 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 the carrying out of the programs administered by the National Oceanic and Atomopheric 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 such other reports as may from time to time be requested by the President or Congress.

The tentative meeting dates are as follows:

January 21, 22—Monday and Tuesday
March 4, 5—Monday and Tuesday
April 17, 18—Wednesday and Thursday
June 3, 4—Monday and Tuesday
July 15, 16—Monday and Tuesday
August 19, 20—Monday and Tuesday
Sept. 30, Oct. 1—Monday and Tuesday
November 14, 15—Thursday and Friday

The public is welcome at the sessions and will be admitted to the extent that 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 these meetings 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: October 31, 1984.

Steven N. Anastasion,

Executive Director.

[FR Doc. 84–29093 Filed 11–5–84; 8:45 am]

BILLING CODE 3510–12–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of the thirty-sixth meeting of the National Commission for Employment Policy at the Capitol Hilton Hotel, 16th and K Streets NW., Washington, DC.

DATES: November 29, 1984—9:00 a.m.—5:00 p.m. and November 30, 1984—9:00 a.m.—1:00 p.m.

STATUS: This meeting will be open to the public.

MATTERS TO BE DISCUSSED: The Commission will discuss issues related to youth employment and hear updates on other Commission activities.

FOR FURTHER INFORMATION, CONTACT: Ms. Patricia Hogue McNeil, Director, National Commission for Employment Policy, 1522 K Street NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION:

The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues. Business meetings are open to the public. Handicapped individuals wishing to attend should contact Velada Waller of the Commission staff so that appropriate accommodations can be made.

People wishing to submit written statements to the Commission that are germane to the agenda may do so, provided that such statements are in reproducible form and are submitted to the Director at least 5 days before the meeting and not more than 7 days after the meeting.

In addition, members of the general public may request to make oral presentations to the Commission, time permitting. Such statements must be applicable to the announced agenda and written application must be submitted to the Director at least 5 days before the meeting. This application should include: name and address of applicant, subject of presentation, relation to agenda, amount of time needed, individual's qualifications to speak on the subject, and a statement justifying the need for an oral rather than written statement.

The Commission Chairman has the right to decide to what extent public oral presentations may be permitted at the meeting. Oral presentations will be limited to statements of fact and views and shall not include any questioning of the Commissioners or other participants unless these questions have been specifically approved by the Chairman.

Minutes of the meeting and materials prepared for it will be available for public inspection at the Commission's headquarters, 1522 K Street NW., Suite 300, Washington, DC 20005.

Signed in Washington, DC, this 29th day of October 1984.

Patricia Hogue McNeil,

Director.

[FR Doc. 84–29174 Filed 11–5–84; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Engineering Research Centers; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I have determined that the establishment of the Advisory Panel for Engineering Research Centers is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, pursuant to section 9(a) of the Federal Advisory Committee Act and other applicable issuances.

Name of Panel: Advisory Panel for Engineering Research Centers

Purpose: To review and evaluate specific proposals requesting NSF support to develop fundamental knowledge in engineering fields that will enhance the international competitiveness of U.S. industry and prepare engineers to contribute through better engineering practice.

Effective date of Establishment and Duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The Panel will operate on a continuing basis subject to its renewal every two years.

Membership: The membership of this Panel shall be fairly balanced in terms of the points of view represented and the Panel's function. Members will be chosen as to be reasonably representative of academia, industrial research and development and the communities of potential users of the research supported by the directorate for Engineering programs. Due consideration will be given to achieving representation from women and minority scholars, the handicapped, and different geographical regions of the country.

Operation: The Panel will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92–463), Foundation policy and procedures, GSA Interim Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

Erich Bloch,

Director.

November 1, 1984.

[FR Doc. 84–29131 Filed 11–5–84; 8:45 am]

BILLIING CODE 7555–01–M

Advisory Panel for Prokaryotic Genetics and Advisory Panel for Eukaryotic; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I have determined that the establishment of the two Advisory Panels listed below is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name: Advisory Panel for Prokaryotic Genetics and Advisory Panel for Eukaryotic Genetics

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in prokaryotic and eukaryotic genetics. Additionally, the Panels provide oversight, general advice and policy guidance.

Effective Date of Establishment and Duration: The establishment of these advisory panels is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The Panels will operate on a continuing basis subject to renewal every two years.

Membership: Membership shall be fairly balanced in terms of the points of view represented and the Panels' functions. Members of each panel will be chosen so as to represent a reasonable balance of competence within each field and the different types and sizes of institutions having research programs in the field. Due consideration will be given to achieving representation from among women, minorities, the handicapped, and geographical regions in the United States.

Operation: The Panels will operate in accordance with provisions of the Federal Advisory Committee Act, Foundation policy and procedures, GSA Interim Regulations on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

Erich Bloch,

Director.

November 1, 1984.

[FR Doc. 84–29132 Filed 11–5–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co. Byron Station, Unit No. 1;

[Docket No. STN 50–454] Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–23 to Commonwealth Edison Company (the licensee) which authorizes operation of the Byron Station, Unit No. 1 (the facility), at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (170 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

Byron Station, Unit No. 1 is a pressurized water reactor located in north central Illinois, 2½ miles east of the Rock River, 3 miles south-south-west of the town of Byron, and 17 miles southwest of Rockford, Illinois. The station is within Rockvale Twonship, Ogle County, Illinois. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating lincense was published in the **Federal Register** on December 15, 1978 (43 FR 58659).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Byron Station, Units 1 and 2 (dated April 1982) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–23, with Technical Specifications and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated March 9, 1982; (3) the Commission's Safety Evaluation Report, dated February 1982 (NUREG–0876), and Supplements 1 through 5; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) and the Final Statement, dated April 1982.

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC. 20555 and at the Rockford Public Library, Rockford, Illinois. A copy of Facility Operating License NPF–23 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention:

Director, Division of Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 5 (NUREG–0876) and the Final Environmental Statement (NUREG–0848) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, DC. 20555. GPO deposit account holders may call 301–492–9530.

Dated at Bethesda, Maryland this 31st day of October, 1984.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 84-29179 Filed 11-5-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-325]

Carolina Power & Light Co., Brunswick Steam Electric Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.55a(g)(i) to the Carolina Power & Light Co. (CP&L, the licensee), for the Brunswick Steam Electric Plant, Unit 1, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption would extend the dates for completion of the local leak rate tests required by 10 CFR Part 50, Appendix J from December 1984 until March 1984 at which time the facility will shut down for an extended refueling outage. During a short outage in November 1984 which is primarily for recirculation pipe inspection about one-half of the tests will be completed. Thus, the tests to be postponed are approximately one-half of those required.

The exemption would be responsive to the licensee's application for an extension dated September 4, 1984 as supplemented October 22, 1984.

The Need for the Proposed Action

The exemption is needed because the licensee does not expect to complete all of the tests before resuming operation of the plant. To meet the schedular requirements set forth by 10 CFR Part 50, Appendix J, all of these would have to be completed during the November 1984 plant outage. This would require that the facility remain shut down throughout the peak winter power demand period.

Environmental Impact of the Proposed Action

Postponement of approximately one-half of the local leak rate tests until March 1985 outage should not have any adverse effects since the systems involved are subject to frequent observation by the operators during their rounds. Leakage from pipes, valves and other components would be noticed and corrected promptly. Therefore, the Commission concludes that there would be no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there would be no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action would involve no use of resources not previously considered in the Final Environmental Statement (operating license) for the Brunswick Steam Electric Plant Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated September 4, 1984, as supplemented October 22, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Southport-Brunswick County Library, 104 W. Moore Street, Southport, North Carolina 28461.

Dated at Bethesda, Maryland, this 26th day of October, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84-29176 Filed 11-5-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 37 to Facility Operating License No. NPF–9 and Amendment No. 18 to Facility Operating License No. NPF–17, issued to Duke Power Company (the licensee), which revised the Technical Specifications for operation of the McGuire Nuclear Station, Units 1 and 2, (the facility) located in Mecklenburg County, North Carolina. The amendments were effective as of the date of their issuance.

The amendments change the Technical Specifications to permit unit operation at less than or equal to 46% rated thermal power with the Upper Head Injection Accumulator System inoperable.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on January 4, 1984 (49 FR 530). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to the action see (1) the application for amendment dated August 2, 1983, (2) Amendment No. 37 to License No. NPF–9 and Amendment No. 18 to License No. NPF–17, 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 Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242. 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 31st day of October 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84-29177 Filed 11-5-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-445]

Texas Utilities Electric Co., Texas Municipal Power Agency, Brazos Electric Power Cooperative, Tex-La Electric Cooperative of Texas, Inc., Comanche Peak Steam Electric Station, Unit No. 1; Issuance of Amendment to Construction Permit

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Construction Permit No. CPPR-126. The amendment reflects changes to two conditions contained in the Construction Permit CPPR-126 to incorporate modifications authorized by an exemption to the General Design Criterion 4 of 10 CFR Part 50, Appendix A issued on August 28, 1984. The Amendment makes effective the partial exemption granted by the Commission, exempting the licensee from the requirement to install jet impingement shields in eight locations per loop in the Comanche Peak, Unit 1 primary coolant piping system.

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 amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment, dated August 20, 1984; (2) Amendment No. 8 to Construction Permit CPPR-126, (3) the Commission's related Safety Evaluation, and (4) Letter to M. D. Spence, Texas Utilities Generating Company from B. J. Youngblood, dated August 28, 1984, Subject: Request for Exemption from a Portion of General Design Criterion 4 of Appendix A to 10 CFR Part 50 regarding the need to Analyze Large Primary Loop Pipe Ruptures as the Structure Design Basis for Comanche Peak Steam Electric Station (Units 1 and 2). All of these items are available for public inspection in the Commission's Public Document Room in 1717 H Street, NW., Washington, D.C. 20555 and in the Somervell County Public Library, On the Square, P.O. Box 417, Glen Rose, Texas 76403. Items 2, 3 and 4 may be requested in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 26th day of October, 1984.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 84-29178 Filed 11-5-84; 8:45 am]

BILLING CODE 7590-01-M

Issuance for Comment of Quality Assurance (QA) Guidance Related to Anticipated Transients Without Scram (ATWS) Equipment That Is Not Safety-Related

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: The NRC staff is issuing a proposed generic letter to all interested parties, including licensees of operating reactors, applicants for operating licenses, and holders of construction permits. This generic letter provides quality assurance (QA) guidance for non-safety-related equipment that is associated with 10 CFR 50.62, "Requirements for Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants." The final QA guidance is expected to be issued in February 1985 and is considered the reference date that initiates the schedule in 10 CFR 50.62(d).

DATE: The comment period expires December 10, 1984. Comments received after this date will be considered if it is practical to do so.

ADDRESSES: Send comments to: Mr. Stephen M. Goldberg; Quality Assurance Branch; Division of Quality Assurance, Safeguards, and Inspection Programs; Office of Inspection and Enforcement; U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Stephen M. Goldberg; Quality Assurance Branch; Division of Quality assurance, Safeguards, and Inspection Programs; Office of Inspection and Enforcement; U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. telephone: 301-492-4968.

SUPPLEMENTARY INFORMATION: The following is the body of a proposed generic letter and an enclosure to the letter which is a table summarizing the QA guidance for non-safety-related ATWS equipment. This letter is to be addressed to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits. This letter describes how this guidance was developed, its relationship to Appendix B to 10 CFR Part 50, and its use for meeting NRC QA requirements for non-safety-related ATWS equipment.

Letter

On June 1, 1984, the Commission approved publication of a final rule, 10 CFR 50.62 regarding the reduction of risk from anticipated transients without scram (ATWS) events for light-water cooled nuclear power plants (49 FR 26036). At the same time, the Commission directed the staff to complete and issue in the form of a generic letter explicit quality assurance (QA) guidance for non-safety-related equipment encompassed by the ATWS rule. Section 50.62(d) of the ATWS rule requires that each licensee develop and submit (to the Director of the Office of Nuclear Reactor Regulation) a proposed schedule for meeting the requirements of the rule within 180 days after issuance of the QA guidance.

To develop QA guidance for ATWS equipment that is not safety related, the NRC staff considered it necessary to survey QA practices applied to non-safety-related equipment at some operating nuclear power plants. During these plant visits, the NRC staff generally found that utility procedures were similarly applied for safety-related and non-safety-related equipment or activities (e.g., design modifications and procurement procedures). At some point in these utility procedures, QA practices for safety-related equipment or activities diverged from the practices employed for non-safety-related equipment or activities. As an example, design modifications to safety-related equipment required QA organizational involvement and design verification; design modifications to non-safety-related equipment required no design verification other than normal supervisory review and no QA organizational involvement. On the Basis of these plant visits, the NRC staff

concluded that, as a general matter, the quality practices now applied to non-safety-related equipment would be adequate for non-safety-related equipment encompassed by the ATWS rule.

Licensees, applicants, and the NRC staff have the desire to minimize the proliferation of QA programs as opposed to the establishment of new and separate QA programs for non-safety-related equipment.

The practices that were observed during the plant visits were either to apply the 10 CFR Part 50, Appendix B program to non-safety-related equipment or to apply QA controls consistent with selected portions of their Appendix B program, although the utility procedures and practices did not specifically reference such controls as Appendix B requirements.

Because of familiarity of the staff and industry with Appendix B requirements and because of demonstrated industry preference, the staff has chosen to develop explicit guidance fort non-safety-related ATWS equipment by framing it in terms of Appendix B criteria. Accordingly, QA controls for non-safety-related ATWS equipment which meet Appendix B criteria except for those portions described below would fulfill NRC requirements:

• The QA organization is not required to participate in developing and implementing QA practices for this equipment, provided that normal supervisory controls exist to verify that the QA practices are being applied. Audits are not required, provided that line management periodically reviews the adequacy of the QA practices as one of its internal control functions.

• A new and separate QA program is not required provided that the licensees or applicants are committed to establish QA controls for this equipment by utility policy statements, by procedures, instructions, or directives, or by other suitable means. In addition, new or separate programs or measures are not required in the following areas:

—*Inspection*, provided that the line organization is responsible for determining inspection requirements and for assuring that sufficient inspections are performed.

—*Test Control*, provided that the line organization is responsible for determining test requirements and for assuring that sufficient testing is performed.

—*Nonconformances and corrective action*, provided that the line organization is responsible for controlling nonconformances, takes prompt action to correct conditions adverse to quality, and, as appropriate, implements measures to preclude repetition.

• Individuals outside the responsible design organization are not required to perform design verification (i.e., measures provided to verify or check the adequacy of the design by competent individuals or groups other than those who performed the original design). Instead, a design review by the designer's supervisor would be adequate.

• Contractors and subcontractors are not required to establish QA programs as a condition of the contract. The licensee's or applicant's QA controls for non-safety-related ATWS equipment become effective at the time the material or equipment is received at the plant. Contractors and subcontractors who perform services at the plant would be subject to the licensee's or applicant's QA controls for non-safety-related ATWS equipment.

• Documentation is not required to be available at the licensee's or applicant's plant to verify procedures were followed for the purposes of satisfying internal control requirements (i.e., documentation that verifies that receipt inspections were conducted need not be retained). However, documentation is required to verify that this equipment is designed, installed, tested, operated, and maintained so as to assure that the design specifications listed in the table published with the ATWS rule (49 FR 26036, pp. 26042–26043) have been met.

Enclosed with this letter is a summary of the QA guidance for non-safety-related ATWS equipment framed in the format of Appendix B to assist licensees and applicants.

In summary, the staff concludes that either the application of QA controls based on the guidance in this letter or the application of Appendix B requirements in their entirety is an acceptable method for satisfying NRC requirements. The staff anticipates that licensees and applicants will select an approach which does not result in the establishment of a new and separate QA program for such equipment.

Issuance of this QA guidance shall be considered the reference date initiating the schedule in 10 CFR 50.62(d).

The establishment of requirements under the ATWS rule was approved by the Office of Management and Budget under clearance number 3150–0111 which expires April 30, 1985 (49 FR 26036, p. 26044). Comments on burden and duplication may be directed to the Office of Management and Budget, Reports Management, Room 3208, New Executive Office Building, Washington, DC 20503.

Summary of the QA Guidance for Non-Safety-Related ATWS Equipment

Requirement and Guidance

I. Organization—None (QA organization not involved).

II. Program—None (no new or separate program required).

III. Design Control—Establish measures [1] to assure design specifications are included or correctly translated into design documents. Safety evaluations and reviews by designer's supervisor are required.

IV. Procurement Document Control—Establish measures to assure specifications and QA requirements are included in procurement documentation.

V. Instructions, Procedures and Drawings—Establish measures for documenting the controls applied to activities that affect quality.

VI. Document Control—Establish measures to control issuance and changes to documents.

VII. Control of Purchased Items and Services—Establish measures at plant to assure that all purchases conform to procurement documents. Stores or warehouse personnel or engineers may perform this verification.

VIII. Identification and Control of Purchased Items—Establish measures to identify and control purchased items (i.e., traceability from receipt at the plant).

IX. Control of Special Processes—Establish measures to control special processes on the basis of codes, standards, and other requirements.

X. Inspection——Establish measures to inspect activities affecting quality. Verify conformance to documentation. Accomplish inspection by trained personnel who did not perform the work.

XI. Test Control—Establish measures to test non-safety-related ATWS equipment prior to installation and operation and periodically. Document and evaluate results.

XII. Control of Measuring and Testing Equipment—Establish measures to control, calibrate, and adjust measuring and test equipment at specific intervals.

XIII. Handling, Storage, and Shipping—Establish measures to control handling, storage, shipping, cleaning, and preservation of purchases in accordance with utility documentation and manufacturer's recommendations.

XIV. Inspection, Test, and Operating Status—Establish measures to indicate status of inspection, test and operability of installed non-safety-related ATWS equipment.

XV. Nonconformances—Establish measures to identify nonconformances.

[1] Except for design control, where the utility is responsible for ensuring that design control measures are applied at contractor or subcontractor organizations, the term "establish measures" applies to activities within the licensee's or applicant's organization, only. Also, the term "measures" is used synonymously with the term "controls" that appears in the latter itself.

XVI. Corrective Action System—Establish measures for prompt correction of conditions which are adverse to quality (i.e., nonconformances). Establish measures, if appropriate, to preclude repetition.

XVII. Records—Establish measures to maintain and control records which furnish evidence that system specifications described in the table of the ATWS rule have been met.

XVIII. Audits—None (audits not required if line management reviews adequacy of QA controls).

Dated at Bethesda, Maryland this 31st day of October 1984.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

[FR Doc. 84-29175 Filed 11-05-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14214; 811-3856]

Bayswater Realty & Capital Corp.; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

October 30, 1984.

Notice is hereby given that Bayswater Realty & Capital Corp. ("Applicant"), 1370 Avenue of the Americas, New York, NY, 10019, registered under the Investment Company Act of 1940 ("Act") as a nondiversified, closed-end, management investment company, filed an application on July 16, 1984, and an amendment thereto on September 21, 1984, for an order of the Commission pursuant to section 8(f) of the Act declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of relevant provisions.

Applicant states that it was incorporated in Delaware on November 8, 1979, and is the successor to Baird & Warner Mortgage and Realty Investors ("Trust"), a real estate investment trust ("REIT") established under Illinois law in 1971. Applicant further states that until 1979, (i) the Trust invested in short-term mortgages and long-term real estate equity investments, (ii) substantially all of the Trust's assets were real estate related, and (iii) the Trust's primary business consisted of acquiring, financing, holding and disposing of real estate. Applicant represents that in May 1979, the Trust's shareholders replaced the incumbent trustees with a slate of nominees led by Carl C. Icahn. Applicant also represents that in December 1979, the Trust's shareholders voted to relinquish its REIT status so that it could engage in non-real estate activities. Applicant advises that the tax-qualified status of the Trust as a REIT was terminated effective August 1, 1980, and that the Trust merged into Applicant effective July 2, 1981.

Applicant states that it liquidated a substantial portion of its real estate investments and invested a portion of its assets in securities. Applicant further states that in November 1982, the Commission commenced an investigation regarding Applicant's status under the Act which resulted in the registration of Applicant as a non-diversified, closed-end, management investment company under the Act on September 23, 1983, and the subsequent settlement of the action on November 3, 1983. Applicant advises that the settlement, which was entered into without admitting or denying the allegations, provided for Applicant's consent to a final order enjoining it from engaging in transactions in violation of section 7(a) of the Act and directing it to comply with certain undertakings.

Applicant states that at a special meeting of shareholders on April 3, 1984, the shareholders approved the Board's proposal that Applicant liquidate a substantial portion of its assets and distribute the proceeds thereof as an extraordinary dividend, and that Applicant deregister as an investment company under the Act. According to Applicant, of the 770,323 shares voted, 753,530 shares were beneficially owned by an affiliate. Additionally, Applicant represents that following the payment of the extraordinary dividend of $14.75 per share ($13,235,352 in the aggregate) on April 20, 1984, its assets consisted principally of real estate holdings and the business of BRC Option Trading Corporation ("BRC"), a wholly-owned subsidiary of Applicant that is a market-maker on the Chicago Board Options Exchange. Applicant also represents that in determining the amount of the extraordinary dividend, it took into account the requirements of Applicant's on-going activities, its debt requirements and applicable restrictions on declarations of dividends in respect of its outstanding debt. Applicant further represents that it is not a party to any litigation not in the ordinary course of a realty business nor is any such litigation contemplated.

Applicant submits it is no longer an investment company as defined under section 3(a) of the Act because substantially all of its assets are devoted to real estate and BRC. According to Applicant, an analysis of its assets under section 3(a)(3) of the Act shows that investment securities constituted less than 8% of its total assets. Applicant also argues that its holdings in BRC are not investment securities under section 3(a)(3) of the Act because BRC is a "majority-owned" subsidiary which is not an investment company.

Applicant states that is is primarily engaged in the real estate business and neither engages nor intends to engage in activities which would bring it within the definition of an investment company under section 3(a) of the Act. For these reasons Applicant requests an order of the Commission pursuant to section 8(f) of the Act declaring that it has ceased to be an investment company. Applicant submits that the granting of the requested order would be appropriate in the public interest and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-29128 Filed 11-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14216; 811-3319]

California Quality Tax-Exempt Trust (Series 1 and Subsequent Series); Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

October 30, 1984.

Notice is hereby given that California Quality Tax-Exempt Trust (Series 1 and Subsequent Series ("Applicant") 1901 North Naper Boulevard, Naperville, Illinois, 60566, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on September 25, 1984, pursuant to section 8(f) of the Act and Rule 8f-1 thereunder, for an order declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, and to the Act for the text of the pertinent statutory provisions.

Applicant was to have been organized under the laws of the State of New York by Van Kampen Merritt, Inc. acting as sponsor and depositor, with Bradford Trust Company serving as trustee. On November 19, 1981, Applicant filed a Notification of Registration under the Act on Form N-8A. However, Applicant did not thereafter file, nor has it ever filed, a registration statement pursuant to section 8(b) of the Act, nor has it issued any securities or filed a registration statement under the Securities Act of 1933 ("Securities Act").

Applicant states that it has no securityholders, and does not propose to make a public offering or engage in business of any kind.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 26, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-29127 Filed 11-5-84; 8:45 am]

BILLING CODE 8010-01-M

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

October 30, 1984.

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:

Aloha, Inc.
Common Stock, $1.25 Par Value (File No. 7-8072)
The American Plan Corporation
Common Stock, $1.00 Par Value (File No. 7-8073)
Banister Continental Ltd.
Common Stock, No Par Value (File No. 7-8074)
Baruch-Foster Corporation
Common Stock, $.50 Par Value (File No. 7-8075)
California Real Estate Investment Trust
Shares of Beneficial Interest (File No. 7-8076)
Canadian Occidental Petroleum Ltd.
Common Stock, No Par Value (File No. 7-8077)
Cetec Corporation
Common Stock, No Par Value (File No. 7-8078)
C.H.B. Foods, Inc.
Common Stock, $1.00 Par Value (File No. 7-8079)
Chieftain Development Co. Ltd.
Common Stock, No Par Value (File No. 7-8080)
Designatronics Incorporated
Common Stock, $.04 Par Value (File No. 7-8082)
Downey Savings and Loan Association
Guarantee, No Par Value (File No. 7-8083)
Evaluation Research Corporation
Common Stock, $.05 Par Value (File No. 7-8084)
Geothermal Resources International, Inc.
Common Stock, $.50 Par Value (File No. 7-8085)
Global Natural Resources Inc.
Common Stock, $1.00 Par Value (File No. 7-8086)
Grand Auto, Incorporated
Common Stock, No Par Value (File No. 7-8087)
IPM Technology, Inc.
Common Stock, $.25 Par Value (File No. 7-8088)
Inter-City Gas Corporation
Common Stock, No Par Value (File No. 7-8089)
Iroquois Brands, Ltd.
Common Stock, $1.00 Par Value (File No. 7-8090)
Lee Pharmaceuticals
Common Stock, $.10 Par Value (File No. 7-8091)
Marathon Office Supply, Inc.
Common Stock, $.30 Par Value (File No. 7-8092)
Mercury Savings and Loan Association
Guarantee, $1.00 Par Value (File No. 7-8093)
Mission West Properties
Common Stock, No Par Value (File No. 7-8094)
Movielab, Inc.
Common Stock, $.50 Par Value (File No. 7-8095)
Nantucket Industries, Inc.
Common Stock, $.10 Par Value (File No. 7-8096)
Newport Electric Corporation
Common Stock, No Par Value (File No. 7-8097)
North Canadian Oils Limited
Common Stock, No Par Value (File No. 7-8098)
Numac Oil & Gas Ltd.
Common Stock, No Par Value (File No. 7-8099)
RTC Transportation Co., Inc.
Common Stock, $.50 Par Value (File No. 7-8100)
Rio Algom Limited
Common Stock, No Par Value (File No. 7-8101)
Rogers Corporation
Capital Stock, $1.00 Par Value (File No. 7-8102)
Sharon Steel Corporation
Common Stock, $.01 Par Value (File No. 7-8103)
Spencer Companies, Inc.
Common Stock, $1.00 Par Value (File No. 7-8104)
Stanwood Corporation
Common Stock, $1.00 Par Value (File No. 7-8105)
Tab Products Co.
Common Stock, No Par Value (File No. 7-8106)
Texaco Canada Inc.
Common Stock, No Par Value (File No. 7-8107)
TransTechnology Corporation
Common Stock, $.50 Par Value (File No. 7-8108)
Tri-State Motor Transit Co. of Delaware
Common Stock, $.66-⅔ Par Value (File No. 7-8109)
United Foods, Inc.
Common Stock Class "A" and "B",

$1.00 Par Value (File No. 7–8110)
Westburne International Industries, Ltd.
Common Stock, $1.00 Par Value (File No. 7–8111)
Wilson Brothers
Common Stock, $1.00 Par Value (File No. 7–8112)
Yardney Corporation
Common Stock, $.25 Par Value (File No. 7–8113)
ACCO World Corporation
Common Stock, $.05 Par Value (File No. 7–7966)
Allied Products Corporation
Common Stock, $5.00 Par Value (File No. 7–7967)
American Bakeries Company
Common Stock, No Par Value (File No. 7–7968)
American Building Maintenance Industries
Common Stock, No Par Value (File No. 7–7969)
Americus Trust, Series A
Units for AT&T Common Shares, Score & Prime (File No. 7–7970)
Amerifin Corporation
Common Stock, $.25 Par Value (File No. 7–7971)
Ampco-Pittsburg Corporation
Common Stock, $1.00 Par Value (File No. 7–7972)
AMREP Corporation
Common Stock, $.10 Par Value (File No. 7–7973)
Amsted Industries, Incorporated
Common Stock, $1.00 Par Value (File No. 7–7974)
Anchor Hocking Corporation
Common Stock, $1.00 Par Value (File No. 7–7975)
Anthony Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–7976)
Apache Petroleum Company
Depositary Units (File No. 7–7977)
ARTRA GROUP, Incorporated
Common Stock, No Par Value (File No. 7–7978)
Atlas Corporation
Common Stock, $1.00 Par Value (File No. 7–7979)
Bandag, Incorporated
Common Stock, $1.00 Par Value (File No. 7–7980)
Bank of Virginia Company
Common Stock, $5.00 Par Value (File No. 7–7981)
Bay Financial Corporation
Common Stock, $1.00 Par Value (File No. 7–7982)
Bay State Gas Company
Common Stock, $10.00 Par Value (File No. 7–7983)
Bell Canada Enterprises, Inc.
Common Stock, No Par Value (File No. 7–7984)
Bell Industries, Inc.
Common Stock, $.25 Par Value (File No. 7–7985)
Black Hills Power & Light Co.
Common Stock, $1.00 Par Value (File No. 7–7986)
Bolt Beranek and Newman Inc.
Common Stock, $1.00 Par Value (File No. 7–7987)
Brown Group, Inc.
Common Stock, $3.75 Par Value (File No. 7–7988)
CCX, Inc.
Common Stock, $2.00 Par Value (File No. 7–7989)
Campbell Resources Inc.
Common Stock, No Par Value (File No. 7–7990)
Carter-Wallace, Inc.
Common Stock, $1.00 Par Value (File No. 7–7991)
Chicago Pneumatic Tool Company
Common Stock, $8.00 Par Value (File No. 7–7992)
Chris-Craft Industries Inc.
Common Stock, $.50 Par Value (File No. 7–7993)
Circus Circus Enterprises, Inc.
Common Stock, $.10 Par Value (File No. 7–7994)
CooperVision, Inc.
Common Stock, $.10 Par Value (File No. 7–7995)
Craig Corporation
Common Stock, $.25 Par Value (File No. 7–7996)
Electronic Memories & Magnetics Corporation
Common Stock, $1.00 Par Value (File No. 7–7997)
Emhart Corporation
Common Stock, $1.00 Par Value (File No. 7–7998)
Far West Financial Corporation
Common Stock, $1.00 Par Value (File No. 7–7999)
The Federal Company
Common Stock, $12.00 Par Value (File No. 7–8000)
Fleet Financial Group, Inc.
Common Stock, $1.00 Par Value (File No. 7–8001)
Foote, Cone & Belding Communications, Inc.
Common Stock, $.33⅓ Par Value (File No. 7–8002)
Freeport-McMoran Oil & Gas Royalty Trust
Units of Beneficial Interest (File No. 7–8003)
General DataComm Industries, Inc.
Common Stock, $.10 Par Value (File No. 7–8004)
Genstar Corporation
Common Stock, No Par Value (File No. 7–8005)
Gerber Scientific, Inc.
Common Stock, $1.00 Par Value (File No. 7–8006)
Harsco Corporation
Common Stock, $1.25 Par Value (File No. 7–8007)
Ingredient Technology Corporation
Common Stock, $1.00 Par Value (File No. 7–8008)
International Aluminum Corporation
Common Stock, $1.00 Par Value (File No. 7–8009)
John Hancock Income Securities Corporation
Common Stock, $1.00 Par Value (File No. 7–8010)
Kubota, Ltd.
Common Stock, Y50 Par Value (File No. 7–8012)
Kyocera Corporation
Common Stock, Y50 Par Value (File No. 7–8013)
LaFarge Corporation
Common Stock, $1.00 Par Value (File No. 7–8014)
Levitz Furniture Corp.
Common Stock, $.40 Par Value (File No. 7–8015)
Loctite Corporation
Common Stock, No Par Value (File No. 7–8016)
Loews Corporation
Common Stock, $1.00 Par Value (File No. 7–8017)
Lukens Inc.
Common Stock, No Par Value (File No. 7–8018)
MacMillan Bloedel Limited
Common Stock, No Par Value (File No. 7–8019)
Marantz Company, Inc.
Common Stock, $1.00 Par Value (File No. 7–8020)
Mark Controls Corporation
Common Stock, $1.00 Par Value (File No. 7–8021)
Maxxam Group Inc.
Common Stock, $.08⅓ Par Value (File No. 7–8022)
McIntyre Mines Limited
Common Stock, No Par Value (File No. 7–8023)
Midwest Energy Company
Common Stock, $5.00 Par Value (File No. 7–8024)
Missouri Public Service Company
Common Stock, $1.00 Par Value (File No. 7–8025)
NAFCO Financial Group, Inc.
Common Stock, $.01 Par Value (File No. 7–8026)
NI Industries, Inc.
Common Stock, $.50 Par Value (File No. 7–8027)
National Can Corporation
Common Stock, $5.00 Par Value (File No. 7–8028)
North European Oil Royalty Trust
Units of Beneficial Interest (File No. 7–8029)
Omark Industries, Inc.
Common Stock, No Par Value (File No. 7–8030)

The Parker Pen Company
Common Stock, $1.50 Par Value (File No. 7–8031)
Philadelphia Suburban Corporation
Common Stock, $.50 Par Value (File No. 7–8032)
Pioneer Electronic Corporation
American Depositary Shares (File No. 7–8033)
Potlatch Corporation
Common Stock, $1.00 Par Value (File No. 7–8034)
RPC Energy Service, Inc.
Common Stock, $.10 Par Value (File No. 7–8035)
Republic Corporation
Common Stock, $2.50 Par Value (File No. 7–8036)
Rexham Corporation
Common Stock, $1.00 Par Value (File No. 7–8037)
Rollins Communications, Inc.
Common Stock, $.10 Par Value (File No. 7–8038)
Scott & Fetzer Company
Common Stock, No Par Value (File No. 7–8039)
Sea-Land Corp.
Common Stock, No Par Value (File No. 7–8040)
Shoe-Town, Inc.
Common Stock, $.01 Par Value (File No. 7–8041)
South Jersey Industries, Inc.
Common Stock, $2.50 Par Value (File No. 7–8042)
Southeastern Public Service Company
Common Stock, $1.00 Par Value (File No. 7–8043)
Southern Indiana Gas & Electric Company
Common Stock, No Par Value (File No. 7–8044)
Southwest Bancshares, Inc.
Common Stock, $5.00 Par Value (File No. 7–8045)
Southwest Forest Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–8046)
Southwest Gas Corporation
Common Stock, $1.00 Par Value (File No. 7–8047)
Stewart-Warner Corporation
Common Stock, $2.50 Par Value (File No. 7–8048)
Stone & Webster, Incorporated
Common Stock, $1.00 Par Value (File No. 7–8049)
Student Loan Marketing Association
Common Stock, $.50 Par Value (File No. 7–8050)
Sun Chemical Corporation
Common Stock, $1.00 Par Value (File No. 7–8051)
Tambrands Inc.
Common Stock, $.25 Par Value (File No. 7–8052)
Temple-Inland Inc.
Common Stock, $1.00 Par Value (File No. 7–8053)
Thomas & Betts Corporation
Common Stock, $.50 Par Value (File No. 7–8054)
Tosco Corporation
Common Stock, $.15 Par Value (File No. 7–8055)
Transcon Incorporated
Common Stock, No Par Value (File No. 7–8056)
Triangle Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–8057)
UCCEL Corporation
Common Stock, $.10 Par Value (File No. 7–8058)
UniDynamics Corporation
Common Stock, $2.50 Par Value (File No. 7–8059)
Unilever PLC (File No. 7–8060)
United Cable Television Corporation
Common Stock, $.10 Par Value (File No. 7–8061)
United Inns, Inc.
Common Stock, $1.00 Par Value (File No. 7–8062)
United Park City Mines Company
Capital Stock, $1.00 Par Value (File No. 7–8063)
United States Leasing International, Inc.
Common Stock, $1.00 Par Value (File No. 7–8064)
Univar Corporation
Common Stock, $.33⅓ Par Value (File No. 7–8065)
Vishay Intertechnology, Inc.
Common Stock, $.10 Par Value (File No. 7–8066)
Hiram Walker Resources Ltd.
Common Stock, No Par Value (File No. 7–8067)
Warnaco Incorporated
Common Stock, No Par Value (File No. 7–8068)
Westcoast Transmission Company Limited
Common Stock, No Par Value (File No. 7–8069)
Winners Corporation
Common Stock, $.05 Par Value (File No. 7–8070)
Woods Petroleum Corporation
Common Stock, $1.00 Par Value (File No. 7–8071)

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 November 21, 1984, 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–29129 Filed 11–5–84; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 14215; 811–3521]

October 30, 1984.

Gateway Money Market Trust; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

Notice is hereby given that Gateway Money Market Trust ("Applicant"), 421 Seventh Avenue, Pittsburgh, PA 15219, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), filed an application on October 2, 1984, for an order pursuant to Section 8(f) of the Act declaring that it has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text or relevant provisions.

Applicant states it was incorporated under the laws of Massachusetts in May 1982, and registered under the Act in July 1982. Applicant further states that it was duly terminated and ceased to exist as of May 29, 1984.

Applicant represents that it never made a public offering or sold any of its securities and that it has no assets. Accordingly, Applicant requests an order of the Commission pursuant to Section 8(f) of the Act declaring it has ceased to be an investment company.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above.

Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-29133 Filed 11-05-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21428; File No. SR-PSE-84-18]

Self-Regulatory Organization; Proposed Rule Change; the Pacific Stock Exchange Incorporated; Relating to the Addition of New Specialist Posts on the Pacific Stock Exchange Equity Trading Floors

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 October 3, 1984, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated will be increasing the amount of physical space available on each of its equity trading floors over the next twelve to eighteen months. The resulting expansion of physical space on its equity trading floors will permit the PSE to consider additional applications for specialist posts in its Los Angeles and San Francisco facilities. Accordingly, the Board of Governors of the PSE has apppointed a Special Committee on Specialists ("Special Committee") to make recommendations on the orderly expansion of specialist activity on each of its equity trading floors.

The Special Committee and the Joint Equity Allocation Committee have made several recommendations to the Board of Governors which are intended to apply only to the nine new specialist posts that the Exchange intends to create in the first quarter of 1985. The proposed recommendations modify existing rules and procedures of the PSE on a temporary basis and only with respect to their application to the approval of these nine additional specialist posts.

The PSE proposes to accept applications for specialist posts from all interested parties, including non-PSE members. Applicants may apply for posts to be located in either Los Angeles and/or San Francisco. Appropriate notification will be sent to all PSE members outlining the proposed expansion approximately thirty days prior to the date on which all applications must be received. Persons wishing to apply for specialist posts who are not PSE members must rely on notice of this rule filing to be published in the **Federal Register**. All applications received on or before November 12, 1984, will be considered by the Exchange.

The Exchange intends to add an additional five specialist posts in San Francisco and four additional specialist posts in Los Angeles during the first quarter of 1985. On or after July 1, 1985, five additional specialist posts may be added in San Francisco, dependent upon the Exchange's experience with the initial phase of expansion and six additional posts may be added in Los Angeles as space becomes available. Applications for the final eleven posts to be added no earlier than July 1, 1985, will be solicited at a later date to be determined by the Board of Governors. Any applications received during the initial expansion phase in excess of the nine approved by the Board of Governors will remain on file and will be considered by the Board of Governors during the second phase of expansion. Each such applicant will be requested, prior to the beginning of the second phase of expansion, to update the information contained on its application. Applications no longer interested in specialist posts may withdraw their applications at that time.

The PSE is proposing to amend certain provisions of its Pilot Program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts ("Pilot Program"). The proposed amendments will apply only to the formation of the additional nine specialist posts which form the subject matter of this filing.

The Pilot Program presently provides that each new specialist may select fifteen stocks from a list of stocks submitted by each existing specialist on the equity trading floor on which the new specialist post will be located. Each existing specialist post is permitted to exclude from the selection process all local issues (issues traded only on the PSE), all dually traded issues, in which the specialist has negotiated a specific order flow arrangement, and a percentage of the posts remaining dually traded issues equal to the average percentage rating received by the specialist under the Pilot Program during the most recent four quarterly performance evaluations (not to exceed 90%). Those specialists falling into the highest and lowest 10% of all specialists on each trading floor are permitted to exclude 90% and 10% of all remaining dually traded issues respectively.

The PSE is proposing to amend several provisions of the Pilot Program to provide that specialists rated below 75 be permitted to freeze eleven dually traded issues. Specialists rated 75 or above, but below 80, will be permitted to freeze twelve dually traded issues. Specialists rated 80 or above, but below 85, will be permitted to freeze thirteen dually traded issues. Specialists rated 85 or above, but below 90, will be permitted to freeze fourteen dually traded issues, and specialists rated at 90 or above will be permitted to freeze fifteen dually traded issues. All specialists will be permitted to freeze local issues in connection with the proposed expansion of specialists posts. Special order flow arrangements will no longer be considered as a basis on which to exclude dually traded issues from the selection process.

In situations where both dually traded common stocks and preferred stocks and/or warrants of the same issuer are traded at one post, a selection of the common stock would include a selection of any preferred stock or warrant of the same issuer traded at the same specialist post as one selection.

Each expansion post would be permitted to select up to fifteen common stocks in the expansion process but no more than one stock may be selected by each expansion post from any existing specialist post. Expansion posts would be exempt from the selection process in subsequent expansions for a period of one year from commencement of operation.

The PSE is also proposing to amend an existing policy which provides that each specialist post must trade a minimum of twenty stocks. The proposed amendment which would reduce the minimum number of stocks to be traded on any specialist post from twenty to ten is intended to remain in effect on a permanent basis and will not be limited to expansion posts only.

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. 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

On May 27, 1981, the Securities and Exchange Commission ("SEC") approved the PSE Pilot Program for a period of one year. With the adoption of the one-year Pilot Program, the Board of Governors at its meeting on June 25, 1981, approved the lifting of a temporary moratorium regarding the creation of new specialist posts on the Los Angeles equity trading floor. The moratorium became effective March 23, 1979, and applied to both the Los Angeles and San Francisco trading floors. The moratorium has remained in effect on the San Francisco trading floor since its adoption in 1979.

At its meeting in June of 1981, the Board of Governors authorized the creation of three specialist posts on the Los Angeles trading floor. Two of those three authorized posts have been approved as of the date of this filing.

The PSE recently received new applications for specialist posts. As a result of this renewed interest in post expansion, the Board of Governors appointed a Special Committee to make recommendations concerning the Exchange's ability to absorb new specialist posts in new and expanded trading facilities, and the PSE's operational capacity to properly regulate and support any additional specialist posts. The Special Committee made various recommendations for the orderly expansion of specialist posts which have been reviewed and adopted by the Board of Governors.

In considering the proposed post expansion, the Special Committee was asked to determine how many additional posts could be approved by the Board of Governors without adversely affecting the Exchange's physical and operational capacity to properly regulate and support those posts. The Special Committee determined that the Board of Governors could approve the creation of twenty new specialist posts in a minimum of two phases. The first phase which will begin in the first quarter of 1985 will accommodate the creation of no more than nine specialist posts, five in San Francisco and four in Los Angeles. The second phase which will begin no earlier than July 1, 1985, will accommodate the creation of an additional eleven specialist posts, five in San Francisco, and six in Los Angeles. The exact date upon which the second phase of the post expansion program will begin will depend upon the Exchange's experience with the first phase of expansion and the availability of adequate physical space in each city.

The Special Committee also considered the existing provisions of the Pilot Program to determine whether substantial post expansion program could have an adverse or detrimental effect on existing specialists posts. In addition, the Special Committee carefully considered the effect which existing provisions in the Pilot Program might have on applicants for new specialists posts. The Committee noted that each existing specialist post could lose as many as ten stocks if the Board of Governors approves the creation of ten posts on each equity trading floor. Depending upon the number of dually traded stocks which each specialist may freeze, some of the stocks which a specialist may lose could be among the "better" stocks at his post. The proposed expansion could, therefore, have detrimental effect on certain existing specialist posts unless an acceptable minimum number of stocks can be frozen by each specialist regardless of his individual rating. The Committee suggested that specialists falling within the lower ten percent on each equity trading floor could lose substantially more stocks of a superior quality, thereby adversely affecting the profitability of existing Exchange franchises. The Committee also determined that under existing provisions of the Pilot Program, other specialists (with higher ratings) would be permitted to freeze substantial numbers of dually traded stocks, thereby creating a less desirable list of stocks from which applicants may choose.

The Special Committee concluded that a large post expansion program was not considered at the time the Pilot Program would result in various inequities to both applicants and existing specialists unless modified on a temporary basis. The Special Committee recommended that modifications to the stock selection process in the Pilot Program be adopted to apply to the first nine specialist posts approved by the Board of Governors in the proposed post expansion. The Committee and the Board of Governors will then re-examine the provisions of the Pilot Program based upon the initial experience with the first phase of expansion.

The proposed post expansion program and any temporary amendments to the PSE Pilot Program are consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"), and furthers the objectives of section 6(b)(2) of the Act, in particular, in that they would provide for access by qualified members to Exchange specialist registration.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have been solicited from all Exchange members in a Notice To Members (ML–84–43) dated August 20, 1984. Copies of all Notice To Members relating to the proposed specialist post expansion, as well as any written comments received by the Exchange are available to interested parties as provided for in Section IV below.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments,

all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before November 27, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

October 24, 1984.

[FR Doc. 84-29130 Filed 11-5-84; 8:45 am]

BILLING CODE 8010-01-M

Allied Corp.; Application and Opportunity for Hearing

November 1, 1984.

In the Matter of Allied Corporation; File No. 22-13347; Trust Indenture Act of 1939 section 310(b)(1)(ii).

Notice is hereby given that Allied Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of The Chase Manhattan Bank (National Association) ("Chase") under an Indenture between The Bendix Corporation ("Bendix") and Morgan Guaranty Trust Company of New York, Trustee dated as of May 15, 1980 (the "Indenture"), which was heretofore qualified under the Act, as supplented by a First Supplemental Indenture dated as of May 30, 1984 (the "Supplemental Indenture") among Bendix, the Company and Morgan Guaranty Trust Company of New York, Trustee, under which the Company assumed, jointly and severally with Bendix, the obligation to make payments on the 11.20% Sinking Fund Debentures Due 2005 (the "Debentures") issued under the Indenture and the trusteeship of Chase under an Indenture dated as of April 1, 1966 relating to the Company's 5.20% Debentures Due November 1, 1991, an Indenture dated as of September 1, 1971 relating to the Company's 7⅞% Debentures Due September 1, 1996 and an Indenture dated as of October 1, 1983 relating to securities to be issued by the Company from time to time thereunder and a supplement thereto dated August 15, 1984 (collectively the "Allied Indentures").

Section 310(b) of the Act, the provisions of which are among the provisions of the Indenture, provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is a trustee under another indenture under which any other securities, or certificates of interest, or participation in any other securities of the same issuer are outstanding.

The present application, filed pursuant to clause (ii) of section 310(b)(1) of the Act, seeks to exclude the Indenture from the operation of section 310(b)(1) of the Act.

The effect of the proviso contained in clause (ii) of section 310(b)(1) of the Act on the matter of the present application is such that the Indenture may be excluded from the operation of section 310(b)(1) of the Act with respect to the Allied Indentures if the Company shall have sustained the burden of proving, by application to the Commission and after opportunity for hearing thereon, that the trusteeship of Chase under the Indenture, as supplemented, and under the Allied Indentures is 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 Chase from acting as trustee thereunder.

The Company alleges that:

(1) The Company owns all of the outstanding Common Stock of Bendix. As of September 28, 1984, Bendix had outstanding $125,000,000 aggregate principal amount of Debentures. The Debentures were registered under the Securities Act of 1933 (Registration No. 2-67636) and the Indenture was qualified under the Trust Indenture Act of 1939 with Morgan Guaranty Trust Company of New York as trustee;

(2) The guarantee by the Company of the Debentures was registered under the Securities Act of 1933 (Registration No. 2-86313) and the Supplemental Indenture with the Company as guarantor of the Debentures and Morgan Guaranty Trust Company of New York as trustee was qualified under the Trust Indenture Act of 1939;

(3) Effective August 27, 1984, Morgan Guaranty Trust Company of New York resigned as trustee under the Indenture as supplemented by the Supplemental Indenture and Chase became trustee;

(4) The debt securities issued under the Allied Indentures were registered under the 1933 Securities Act (Registration No. 2-24722 for the 5.20% Debentures Due 1991, Registration No. 2-41691 for the 7⅞% Debentures Due 1996 and Registration No. 2-68994 for the securities issued under the Indentures dated as of October 1, 1983) and the Allied Indentures were qualified under the Trust Indenture Act of 1939.

(5) The Indenture, as supplemented, and the Allied Indentures are wholly unsecured, and rank pari passu inter se;

(6) The Company's obligation to make payments under the debt securities issued under the Allied Indentures is neither superior nor inferior in right of payment of the Company's obligations on the Debentures;

(7) Neither Bendix nor the Company is in default under the Indenture, as supplemented, or the Debentures;

(8) The Company is not in default under the Allied Indentures or the debt securities issued under the Allied Indentures; and

(9) Such differences as exist between the Indenture and the Allied Indentures 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 Chase from acting as trustee thereunder.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after November 21, 1984, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939. Any interested person may, not later than November 21, 1984 at 5:30 P.M., Eastern Daylight Savings Time, in writing, submit to the Commission, his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be

addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

By the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-29192 Filed 11-5-84; 8:45 am]

BILLING CODE 8010-01-M

Atlan-Tol Industries, Inc.; To Withdraw From Listing and Registration

November 1, 1984.

In the Matter of Atlan-Tol Industries, Inc., Common Stock, $.05 Par Value; File No. 1-8000; Securties Exchange Act of 1934 Section 12(d).

The above named issuer has filed an application with the Securities and Exchange Commission pursuant 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 Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) The listing of the common stock on the BSE is not seen by the Company to be of any significant continuing advantage to shareholders. When trading on the BSE began in 1980, it helped to broaden public ownership of shares. Shares are now traded throughout the United States, and most of the transactions are in the over-the-counter market.

(2) The Company believes that its shareholders would benefit from the increased visibility of the common stock which will result if all buying and selling is concentrated in the over-the-counter market.

Any interested person may, on or before November 26, 1984, 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-29189 Filed 11-5-84; 8:45 am]

BILLING CODE 8010-01-M

Bolt Beranek and Newman, Inc., Application To Withdraw From Listing and Registration

In the matter of Bolt Beranek and Newman Inc. Common Stock, $1.00 Par Value; File No. 1-6435, Securities Exchanges Act of 1934 section 12(b).

November 1, 1984.

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 common stock ($1.00 par value) of the Registrant has been listed for trading on the Amex and, pursuant to a registration statement on Form 8-A (effective December 20, 1983), the New York Stock Exchange ("NYSE"). Trading in the common stock on the NYSE commenced at the opening of business on December 22, 1983. Concurrently therewith, the common stock ceased trading on the Amex.

(2) The registrant has considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The registrant does not see any advantage in the dual trading of its common stock and believes that dual trading would fragment the market for the common stock.

(3) The Amex has informed the registrant that it has no objection to the withdrawal of the common stock from listing on the Amex.

Any interested person may, on or before November 26, 1984, 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 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-29191 Filed 11-5-84; 8:45 am]

BILLING CODE 8010-01-m

General Portland Inc.; Application To Withdraw From Listing and Registration

In the matter of General Portland Inc. Sinking Fund Debentures Due 1996; File No. 1-3438; Securities Exchange Act of 1934 section 12(d).

November 1, 1984.

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-d(d) promulgated thereunder, to withdraw the specified security from listing and registration on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) The debentures are infrequently traded and held by a limited number of investors, primarily institutions. The cost attendant do not warrant continued listing and registration of the debentures.

(2) The company was notified by the NYSE in March 1984 that it would raise no objection to the delisting and deregistration.

Any interested person may, on or before Novenber 26, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC. 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-29190 Filed 11-5-84; 8:45 am]

BILLING CODE 8010-01-M

SL Industries, Inc.; Application To Withdraw From Listing and Registration

November 1, 1984.

In the Matter of SL Industries, Inc., Common Stock, $.20 Par Value; File No. 1-4987; Securities Exchange Act of 1934 section 12(d).

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 $.20 par value common stock of the Registrant has been listed for trading on the Amex, and pursuant to a registration statement on Form 8-A (effective September 14, 1984), the New York Stock Exchange ("NYSE"). Trading in the Registrant's common stock on the NYSE commenced at the opening of business on September 20, 1984 and concurrently therewith such stock was suspended from trading on the Amex.

(2) The Registrant has considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Registrant does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock. The Amex has informed the Registrant that it has no objection to the withdrawal of the Registrant's common stock from listing on the Amex.

(3) This application relates solely to the withdrawal from listing of the Registrant's common stock from the Amex and shall have no effect upon the continued listing of such common stock on the NYSE.

Any interested person may, on or before November 26, 1984, 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-29168 Filed 11-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21438; File No. SR-MSRB-84-15]

Self-Regulatory Organization; Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board

October 31, 1984.

The Municipal Securities Rulemaking Board ("MSRB") on October 1, 1984, submitted to the Commission a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder that would amend MSRB Rule G-12(h). The Commission is publishing this notice to solicit comments on the proposal from interested persons.

Rule G-12(h) sets forth certain procedures to be followed by municipal securities dealers seeking to close-out transactions which have not been completed. The Rule currently provides that a selling dealer, who has received an initial close-out notice and who has not retransmitted that notice to another party from whom securities are due, may extend for ten business days the period after which the purchasing dealer may effect the close-out under Rule G-12(h)(i)(D) if the securities demanded are already in transfer (the "in-transfer extension"). The Rule also provides that this remedy is available to the selling dealer only if the initial notice of close-out is given before January 1, 1985. The proposal would change this "sunset" date to January 1, 1986.

The current Rule was adopted by the MSRB in December 1982 as a result of the registration requirements of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA").[1] The MSRB believed that, during the initial implementation of the TEFRA requirements, transfer agent performance for newly registered municipal securities issues might be relatively inefficient and, consequently, might cause delays in trade settlement. The MSRB further believed that transfer agent performance would improve as transfer agents gained more experience with transferring record ownership of municipal securities. Accordingly, the MSRB anticipated that municipal securities dealers no longer would need the in-transfer extension after January 1, 1985. The MSRB recently surveyed municipal securities transfer practices and discovered that many of the larger, more sophisticated transfer agents have adapted successfully to the TEFRA requirements. Some smaller exclusive municipal securities transfer agents, however, have not yet achieved the desired levels of efficiency in processing transfer requests. Accordingly, the MSRB believes that it would be appropriate to continue the in-transfer extension on the close-out procedures for another year, *i.e.*, until January 1, 1986.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons submitting written comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to File No. SR-MSRB-84-15.

Copies of the submission and all related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the MSRB.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-29193 Filed 11-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21437; File No. SR-OCC-84-17]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of the Options Clearing Corp.

October 31, 1984.

The Options Clearing Corporation ("OCC") on September 25, 1984, submitted a proposed rule change to the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The

[1] TEFRA amended section 103 of the Internal Revenue Code to provide that most municipal securities issued after June 30, 1983, would have to be issued solely in registered form for interest paid on those securities to be exempt from federal income taxes.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would reduce each Non-Equity Clearing Member's required minimum contribution to OCC's Non-Equity Security ("NEO") Clearing Fund from $100,000 to $50,000.[1] In its filing, OCC explains that at the time the $100,000 requirement was adopted, the only non-equity option ("NEO") products contemplated were debt securities options, *i.e.*, options on GNMA's and Treasury Bills, Bonds and Notes. Accordingly, OCC's previous NEO Clearing Fund minimum requirement of $100,000 was based on OCC's anticipated financial exposure from those products.[2]

Since that time, however, OCC has reassessed its minimum NEO Clearing Fund requirement because of several NEO market developments. First, debt option premiums have been smaller than expected due to a low volume of trading in these options. Second, OCC and the registered options exchanges have developed other types of NEO contracts, such as options on stock indices and options on foreign currencies. Third, the preponderance of NEO open interest has been in stock index options, whose premium levels closely approximate equity option premium levels. Moreover, because of the large amount of stock index option open interest, OCC estimates that a volume-weighted average NEO contract size now is about $17,000 as opposed to the $100,000 GNMA option contract size that was an important factor when the $100,000 minimum contribution was adopted. As a result, OCC believes that the NEO Clearing Fund is substantially greater than necessary.

OCC believes that the proposed $50,000 minimum NEO Clearing Fund requirement will sufficiently protect OCC and its clearing members from financial exposure and, at the same time, will reduce financial burdens on clearing members. OCC in a recent study found that the $50,000 minimum would result in an aggregate clearing fund that would cover fully each clearing member's margin deposit, except for the margin deposit of the very largest clearing member. Consequently, OCC asserts that in the remote event that an insolvent clearing member's OCC margin deposit [3] (other than that of the largest clearing member) were unavailable to OCC for a period of time, OCC generally would be able to cover fully the insolvent's outstanding obligations using aggregate clearing fund assets. With respect to the largest clearing member, OCC could use its retained earnings to make up the shortfall.[4] In its filing, OCC states that this result is consistent with OCC's policy that the aggregate clearing fund should be of sufficient magnitude to cover the average daily margin requirements of any but the very largest clearing members.

OCC believes that the proposed rule change is consistent with the requirements of the Act in that it removes an impediment to participation in the NEO market by reducing costs to market participants. In addition, for the reasons discussed above, OCC believes that the proposal will not adversely affect the safeguarding of securities and funds in OCC's custody or control or for which OCC is responsible.

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Written comments may be submitted within 21 days from the date this Notice is published in the Federal Register. Six copies should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–OCC–84–17.

Copies of all documents relating to the proposal, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room in Washington, D.C., or at OCC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–29194 Filed 11–5–84; 8:45 am]

BILLING CODE 8010–01–M

[1] A clearing Member's required Clearing Fund contribution may be greater than the minimum contribution. Under OCC Rule 1001, a NEO Clearing Member must deposit the greater of the minimum contribution or the Clearing Member's proportionate share of an amount equal to 7% of the average daily aggregate margin requirement regarding NEO contracts outstanding during the preceding calendar month. *See* OCC Rule 1001 for a detailed description of OCC's NEO Clearing Fund formula.

[2] OCC believed that its financial exposure for each NEO contract would be significantly higher than for each stock option contract due to anticipated higher premiums per NEO contract and the greater value of each outstanding NEO trading unit. Specifically, OCC expected the average premium for each NEO contract to be about $4500 as opposed to an average premium of $400 for each stock option contract. In addition, the trading unit for NEO contracts was expected to be much larger than the trading unit for stock options. For example, the nominal principal amount of a single GNMA options contract is $100,000. For further discussion, *see* Securities Exchange Act Release No. 19139 (October 14, 1982), 47 FR 46940 (October 21, 1982).

[3] OCC's margin program is OCC's primary financial protection against financial exposure from clearing member default. *See* Chapters VI and XI of OCC's Rules.

[4] *See* Article VIII, section 5 of OCC's By-Laws.

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0325]

Chemical Venture Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On August 21, 1984, a notice was published in the Federal Register (49 FR 33192) stating that Chemical Venture Capital Corporation, 277 Park Avenue, New York, New York 10172, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license to operate as a small business investment company.

Notice is hereby given that no written comments were received, and having considered the application and all other pertinent information, the SBA approves the issuance of License No. 02/02–0325 on October 22, 1984, to Chemical Venture Capital Corporation, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 30, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–29157 Filed 11–5–84; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting and Recordkeeping Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to

submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish notice in the **Federal Register** that the agency has made such a submission.

DATE: Comments must be received on or before November 30, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies

Copies of the forms, requests for clearance (S.F. 83s), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., N.W., Room 200, Washington, D.C. 20416, Telephone: (202) 653–8538

OMB Reviewer: Kenneth B. Allen, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395–3785

Information Collections Submitted for Review

Title: Size Standard Declaration
Form no. SBA 480
Frequency: On occasion
Description of Respondents: New small business concerns
Annual Responses: 4,200
Annual Burden Hours: 1,050
Type of Request: Reinstatement

Title: Annual Update of 8(a) Application and Business Plan
Form no. SBA 1450
Frequency: Annually
Description of Respondents: 8(a) program participants
Annual Responses: 2,400
Annual Burden Hours: 24,000
Type of Request: New

Title: Authorization for Publication of 8(a) Contractor Profiles
Form no. SBA 1449
Frequency: Annually
Description of Respondents: Participating 8(a) company exhibitors
Annual Responses: 200
Annual Burden Hours: 100
Type of Request: New

Title: Management Development Plan
Form nos. SBA 933, 1099, 1100, 1107
Frequency: Occasion
Description of Respondents: Clients seeking management assistance
Annual Responses: 35,000
Annual Burden Hours: 122,500
Type of Request: Extension

Title: Request for Counseling
Form no. SBA 641
Frequency: On occasion
Description of Respondents: Individuals interested in obtaining management counseling
Annual Responses: 380,000
Annual Burden Hours: 63,333
Type of Request: Extension

Title: Business Development Program Field Visit Report
Form no. SBA 1010H
Frequency: Annually
Description of Respondents: 8(a) program participants
Annual Responses: 2,400
Annual Burden Hours: 7,200
Type of Request: New

Title: Contract Progress of Certificate of Competency
Form no. SBA 104A
Frequency: Monthly
Description of Respondents: Small business contractors
Annual Responses: 6,600
Annual Burden Hours: 33,000
Type of Request: New

Dated: October 31, 1984.

Elizabeth Zaic,

Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 84-29156 Filed 11-5-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Noise Compliance Rule; Miami and Bangor International Airports; Exemption Application Procedures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Form and Manner of Application for Exemption from Federal Aviation Regulations (FAR) Sec. 91.303 Under the Provisions of Pub. L. 98–473, sec. 124.

SUMMARY: This notice establishes procedures to petition for an exemption from the FAA's aircraft noise compliance rule for operations conducted at either Miami International Airport, Florida, or Bangor International Airport, Maine.

DATE: October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Wesler, Director of Environment and Energy, Federal Aviation Administration, Washington, D.C. 20591; Telephone: (202) 426–8406.

Background

On October 12, 1984, the President signed Pub. L. 98–473, which, in section 124, requires that, under certain circumstances, the FAA issue limited exemptions from the aircraft noise compliance rule established by Pub. L. 96–193 and reflected in FAR Section 91.303. Section 91.303 prohibits the operation, on and after January 1, 1985, at any airport in the United States, of civil subsonic turbojet aircraft of 75,000 pounds gross weight or more which have not been shown to meet the Stage 2 or Stage 3 noise standards of FAR Part 36. Section 124 of Pub. L. 98–473, however, requires that limited exemptions from the noise rule be granted under certain circumstances to any person operating aircraft at either Bangor or Miami International Airports if: (1) Those aircraft are ones for which hush kits are currently under development, or (2) those aircraft were obtained by the operator prior to January 1, 1980, and no hush kits for them are currently under development. In exceptional circumstances, if the FAA determines that equipment to insure compliance with the provisions of Pub. L. 96–193, which has been certified by the FAA for that purpose will not be available to the holder of the exemption by December 31, 1985, the FAA may extend such exemption for such period as the FAA detemines is necessary to insure compliance with such provisions. This notice provides procedures on the form and manner in which persons seeking exemptions under Section 124 should submit their petitions.

Application Procedures

1. Section 124 of Pub. L. 98–473 requires operators seeking limited exemptions from FAR Section 91.303 to provide specified information to the FAA before January 1, 1985. If petitioners do not submit the information required by the statute prior to January 1, 1985, the FAA has no authority to consider their petitions under the provisions of Pub. L. 98–473. In order to allow sufficient time for FAA to process requests for exemptions under section 124 prior to January 1, 1985, petitioners should submit their requests not later than November 30, 1984.

The FAA will cooperate with petitioners and will make every effort to act promptly and resolve any issues that arise. Nevertheless, the FAA cannot assure that petitions submitted after November 30, 1984, will be acted upon by January 1, 1985, and petitioners should be aware that, if no exemption has been issued by that date, they may

not operate non-complying aircraft to or from airports in the United States unless and until such exemption has been issued. Moreover, submission of petitions by November 30, 1984, cannot assure timely processing of those requests which are incomplete when submitted, or which involve unusual matters.

2. The original and two copies of the petition should be submitted to: Rules Docket (AGC–204), Federal Aviation Administration, 800 Independent Avenue, Southwest, Washington, D.C. 20591.

3. Petitioners should submit at least the following:

a. All petitions shall include:

(1) A brief statement of which subsection of section 124 of Pub. L. 98–473 the petitioner is relying upon and the facts which bring petitioner within the provisions of the relevant subsection.

(2) The registration and serial numbers, and model designation, of each aircraft for which an exemption is requested.

(3) A statement as to whether exemption is sought for either Miami or Bangor International Airports.

(4) The duration of the requested exemption, but in no case to exceed December 31, 1985.

(5) In each case where an affidavit is required to accompany a petition, that affidavit shall be executed by an authorized officer of the petitioner, shall clearly state his or her title, and shall (under penalty of 18 U.S.C. 1001) certify as true and complete the information as to which affidavit is required.

(6) In each case where a non-refundable deposit is required in these procedures, the FAA will consider that term to include an irrevocable letter of credit.

b. If the petition is under subsection (b) of section 124, it shall also include:

(1) A copy of a contract with a hush kit supplier. As required by section 124(d), the FAA will review the contract to determine that:

(i) It is with a bona fide hush kit supplier. In this connection, petitioners should be aware that the burden is on them to establish that the hush kit supplier is bona fide. At a minimum, the FAA will expect a bona fide hush kit supplier, if a hush kit manufacturer, to be one who, on or before October 12, 1984, was currently and substantially involved in the FAA hush kit certification process and who the FAA believes will be certified in time to meet the deadline contained in Section 124. If the supplier is not a hush kit manufacturer, the petitioner must submit documentation concerning the source of its hush kits and the supplier's ability to install them. In addition, the FAA may ask the petitoner for further information to determine whether the hush kit supplier is bona fide.

(ii) It is fully executed showing date of execution and signatures by corporate officers of both parties having authority to execute contracts; identifies delivery positions and delivery dates; identifies affected aircraft by registration and serial numbers; and contains from provisions for a non-refundable deposit to be made upon execution of the contract.

(2) The date petitioner expects hush kits to be installed on each aircraft covered by the petition, together with a statement from the hush kit manufacturer that the contract with the hush kit supplier for each aircraft covered by the petition provides for delivery of the hush kits at the earliest possible date.

(3) A statement of the amount of non-refundable deposit established by petitioner in favor of the hush kit supplier, but in no event may such deposit be for an amount less than $75,000 for each aircraft covered by the contract. (A minimum $75,000 deposit is specified by the FAA to assure that petitioners meet the requirements of section 124(d) and will undertake good faith efforts to comply; the FAA fully expects that normal commercial practices will govern contracting and payments between petitioners and suppliers.)

(4) An affidavit stating the number of operations conducted to Miami or Bangor for each month during the period from October 12, 1983 through October 11, 1984, by all petitioner's non-complying aircraft; and the number and type of non-complying aircraft operated on those flights.

c. If the petition is under subsection (c) of section 124, it shall also include:

(1) An affidavit stating that petitioner will, not later than June 1, 1985, enter into a contract for an appropriate complying aircraft, which is one capable of maintaining a similar type and level of service and that provided by the aircraft being replaced, and that such contract will contain provisions for:

(i) Delivery at the earliest possible date, but, in any event, not later than December 31, 1985.

(ii) A non-refundable deposit in an amount equivalent to not less than ten percent of the fair market value of the complying aircraft, or, for leased aircraft, an amount not less than two months lease cost.

(2) An affidavit concerning the date(s) of acquisition by petitioner of each aircraft for which an exemption is sought under subsection (c) of section 124, including type, model, registration number, and serial number.

(3) An affidavit containing the same information described above in paragraph 3b.(4).

(4) Petitioners should be aware that the FAA considers a bona fide supplier of a complying aircraft to be one which is: a recognized manufacturer of transport category; a US or foreign air carrier which currently holds valid operating authority from the FAA or the equivalent foreign authority; or a known aircraft sales or leasing company. If none of the foregoing applies, petitioner must supply the FAA with sufficient information about the supplier for the FAA to determine that the supplier will be able to provide a complying aircraft prior to the date petitioner states it will no longer need an exemption, or December 31, 1985, whichever is earlier. In addition, the FAA may ask the petitioner for further information to determine whether the supplier of the complying aircraft is bona fide.

General Exemption Provisions

1. Petitioners should be aware that any exemptions granted under Pub. L. 98–473 are limited to specific airplanes and to the use of those airplanes at certain locations under specified monthly limits on the number of operations. Such exemptions are, by law, of limited duration. Any exemptions granted will include, but not be limited to, the conditions and limitations listed below:

a. They will expire on the earlier of the following dates:

(1) The scheduled date for installation of the certificated hush kits, or the scheduled delivery date for the complying airplane.

(2) Sixty days after the failure by the hush kit manufacturer to receive FAA cetrification. During that period petitioner will be expected to enter into a substitute contract with a bona fide supplier. (The FAA will offer all possible assistance to petitioners during that period.)

(3) Termination of qualifying service by the exemption holder.

(4) December 31, 1985.

b. The petitioner shall not operate more than the allowable frequency of operations, or the allowable number of non-complying aircraft.

c. To fulfill its responsibilities in administering Pub. L. 98–473, the FAA will require monthly reports on the number of flights operated to Bangor or Miami International Airports for each exempted airplane, and on the status of the hush kit or complying airplane acquisition programs.

Issued at Washington, D.C. on October 31, 1984.

Donald D. Engen,

Administrator.

[FR Doc. 84-29087 Filed 11-5-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 84-216]

Revocation by Operation of Law of Customhouse Broker's License No. 7423

Pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111 of the Customs Regulations, as amended (19 CFR 111.52), notice is hereby given that customhouse broker's license No. 7423 of Transpacific Air Cargo Corporation is revoked by operations of law.

William von Raab,

Commissioner of Customs.

[FR Doc. 84-29146 Filed 11-5-84; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Performance Review Board Members; Appointment

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Veterans Administration's Performance Review Boards which was published in the **Federal Register** 48 FR 52004, dated November 15, 1983.

EFFECTIVE DATE: November 1, 1984.

FOR FURTHER INFORMATION CONTACT: K. Joyce Edwards, Office of Personnel and Labor Relations (05A3), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-3423).

SUPPLEMENTARY INFORMATION: The members of the VA's Performance Review Boards are:

VA Performance Review Board

Chairperson

Everett Alvarez, Jr., Deputy Administrator

Members

John W. Ditzler, M.D., Chief Medical Director
Dorothy L. Starbuck, Chief Benefits Director
Paul T. Bannai, Chief Memorial Affairs Director
Dominick Onorato, Associate Deputy Administrator for Information Resources Management
William F. Sullivan, Associate Deputy Administrator for Logistics
Donald W. Jones, Associate Deputy Administrator for Public and Consumer Affairs
David A. Cole, Associate Deputy Administrator for Congressional and Intergovernmental Affairs
Robert E. Coy, Acting General Counsel
Kenneth E. Eaton, Chairman, Board of Veterans Appeals
Jack J. Sharkey, Director, Office of Data Management and Telecommunications
Conrad R. Hoffman, Director, Office of Budget and Finance (Controller)
Raymond S. Blunt, Director, Office of Program Planning and Evaluation
Albert A. Peter, Jr., Director, Office of Construction
Michael Rudd, Director, Director, Office of Personnel and Labor Relations
Clyde C. Cook, Director, Office of Procurement and Supply
Robert W. Schultz, Director, Office of Information Management and Statistics
Renald P. Morani, Assistant Inspector General for Policy, Planning and Resources

Alternate

John A. Gronvall, M.D., Deputy Chief Medical Director
John W. Hagan, Jr., Deputy Chief Benefits Director

Department of Medicine and Surgery Performance Review Board

Chairperson

D. Earl Brown, Jr., M.D., Associate Deputy Chief Medical Director

Members

Joseph F. Heavey, Executive Assistant to Deputy Chief Medical Director
Francis E. Conrad, M.D., Deputy Associate Deputy Chief Medical Director for Operations
Charles V. Yarbrough, Director, Management Support Office
James T. Krajeck, Director, Northeast Region
Donald B. Thompson, Director, Southeast Region
Albert Zamberlan, Director, Great Lakes Region
Richard P. Miller, Director, Mid-Western Region
Daniel E. Cooney, Director, Western Region
Alvis B. Carr, Jr., Director, Mid-Atlantic Region

Department of Veterans Benefits Performance Review Board

Chairperson

John W. Hagan, Jr., Deputy Chief Benefits Director

Members

David M. Walls, Field Director, Eastern Region
Raymond B. Peterson, Field Director, Central Region
Edward D. Green, Director, Veterans Assistance Service
Robert M. O'Toole, Director, Loan Guaranty Service
Dennis R. Wyant, Director, Vocational Rehabilitation and Counseling Service
Charles L. Dollarhide, Director, Education Service
Donald M. Twitty, Director, Budget Staff
Frederick A. Schatz, Director, Administrative Service
Richard A. Rehling, Director, Management and Manpower Staff

Office of the Inspector General Performance Review Board

Chairperson

James Curry, Assistant Inspector General for Internal Audit Oversight and Policy, Department of Defense

Members

Joseph Genovese, Assistant Inspector General for Auditing, Department of Transportation
Dominick Onorato, Associate Deputy Administrator for Information Resources Management

Alternates

Charles Gillum, Deputy Inspector General, General Services Administration
Frank DeGeorge, Deputy Inspector General, Department of Commerce
John Yazurlo, Deputy Inspector General, Department of Education

Dated: October 30, 1984.

Harry N. Walters,

Administrator.

[FR Doc. 84-29135 Filed 11-5-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 216
Tuesday, November 6, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	Items
Civil Rights Commission	1
Consumer Product Safety Commission	2
Federal Communications Commission	3
Federal Energy Regulatory Commission	4
National Science Board	5
Securities and Exchange Commission	6

1

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue NW., room 500, Washington, D.C.

DATE AND TIME: Thursday, November 8, 1984, 9:00 a.m.–4:00 p.m.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
  D. Consideration of Revised Meeting Dates
IV. Approval of Revised CCR Regulations
V. Civil Rights Developments in the Western Region
VI. Interim Appointment to Delaware State Advisory Committee
VII. Presentation From National Anti-Klan Network

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Lawrence B. Glick,

Solicitor.

November 1, 1984.

[FR Doc. 84-29277 Filed 11-2-84; 3:23 pm]

BILLING CODE 6335-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission meeting, Thursday, November 8, 1984, 10:00 a.m.

LOCATION: Third floor hearing room, 1111—18th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *CPSC Hazard Data Systems Contractor Report*
   The Contractor for the Hazard Data Systems Study will brief the Commission concerning their findings for available options for collecting injury data.
2. *Conjugated Estrogens: Final PPPA Exemption*
   The staff will brief the Commission on a draft final rule to exempt memonic (Memory-aid) dispenser packages of conjugated estrogen tablets and norethindrone acetate tablets from special packaging requirements.

Closed to the public

3. *Enforcement Matter OS #3896*
   The staff will brief the Commission on Enforcement Matter OS #3896.

For a recorded message containing the latest agenda information, call: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800.

November 1, 1984.

Sadye E. Dunn,

Director, Office of the Secretary.

[FR Doc. 84-29195 Filed 11-2-84; 8:58 am]

BILLING CODE 6355-01-M

3

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, November 8, 1984.

November 1, 1984.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 8, 1984, which is scheduled to commence at 9:30 a.m., in room 856, at 1919 M Street NW., Washington, D.C.

Agenda, Item No. and Subject

General—1—*Title:* A Re-Examination of Commission's Technical Regulations. *Summary:* The Commission will consider in this *Report and Order* the adoption of guidelines to be used in future deregulation proceedings and the deletion of specific regulations raised in the proposal portion of the *Notice of Inquiry and Proposed Rule Making* in Gen. Docket No. 83–114.

Common Carrier—1—*Title: Second Report and Order* in CC Docket No. 81–216 concerning technical standards for interconnection of network channel terminating equipment (NCTE) to digital services. *Subject:* The Commission will consider resolution of final technical standards issues for interconnection of NCTE to digital services, and parties comments submitted in response to the notice of proposed rulemaking in *Interconnection Order*, 94 F.C.C. 5 (1983), *recon. denied* FCC 84–145, released April 27, 1984.

Common Carrier—2—*Title:* Report and Order in Docket 82–122; In the Matter of Interconnection Arrangements Between and Among the Domestic and International Carriers. *Summary:* The Commission will consider whether to rescind its existing prescriptions prior to the sunset date of major provisions of the RCCA in order to permit the implementation of an intercarrier agreement.

Common Carrier—3—*Title:* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I and Phase II, Part 1. *Summary:* The Commission will consider a Memorandum Opinion and Order concerning the proposed Special Access provisions of access service tariffs filed by local exchange carriers.

Mass Media—1—*Title:* A petition for reconsideration of the Commission's By Direction letter to Mr. John C. Malone, filed by Community Tele-Communications, Inc. *Summary:* The Commission considers a petition for reconsideration which argues that inappropriate labor force data were used by the Commission in its analysis of Community Tele-Communications, Inc.'s EEO performance.

Mass Media—2—*Title:* Application for Review of a Bureau ruling assessing a forfeiture against Alphia Broadcasting Corporation licensee of radio station WCRV, Washington, New Jersey. *Summary:* The Commission will consider whether Alpha's political broadcasting practices violated the lowest unit charge and nondiscrimination provisions of the Communications Act and the Commission's rules.

Mass Media—3—*Title:* Amendment of the Commission's Rules to Delete Restrictions on Cable Television Broadcast Television Cross-Ownership (RM–3810). Divestiture Requirement of § 76.501 Relative to Egregious Cable Television Broadcast Television Cross-Ownership in Existence on or before July 1, 1970. *Summary:* The Commission will consider a petition for rule making which seeks repeal of its prohibition against the common ownership of cable television systems and co-located broadcast television stations. The Commission will also consider whether to require divestiture of the egregious cable/broadcast cross-interests which were in existence on or before July 1, 1970.

Mass Media—4—*Title:* Amendment of § 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Tranfers of Control.) *Summary:* The Commission adopted a *Report and Order* in BC Docket No. 81–897 eliminating the three year rule. A Petition for Reconsideration

was filed by Citizen Communications Center, et al. The Commission will consider this petition and other relevant issues from the proceeding.

Mass Media—5—*Title:* Amendment of Parts 2, 73 and 76 of the Commission's Rules to Authorize the Transmission of Teletext by TV Stations. *Summary:* The Commission will consider a *Memorandum Opinion and Order* to address petitions for reconsideration filed by sixteen parties concerning its *Report and Order* authorizing television stations to operate teletext services (BC Docket 81–741).

Mass Media—6—*Title:* Amendment of Part 2, 73, and 76 of the Commission's Rules to Authorize the Offering of Data Transmission Services on the Vertical Blanking Interval by TV Stations. *Summary:* The Commission will consider a *Report and Order* concerning amendment of the Rules to permit use of the television vertical blanking interval for data transmission services (MM Docket 84–168).

Mass Media—7—*Title:* Petition for Reconsideration of Amendments of Part 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorization. *Summary:* The Commission will consider a *Petition for Reconsideration* of the *Memorandum Opinion and Order* in BC Docket No. 82–536, FM subcarriers.

Mass Media—8—*Title:* Application for review of Mass Media Bureau action returning Artlite Broadcasting Company, Inc.'s application for a construction permit as unacceptable for filing. *Summary:* The Commission considers whether to adopt the application for review, returning Artlite Broadcasting Company, Inc.'s application.

Mass Media—9—*Title:* Application filed by Win Broadcasting Company for review of an action by the Chief of the Audio Services Division, pursuant to delegated authority, denying a petition for reconsideration of the return of its application for a new AM broadcast station as unacceptable for filing. *Summary:* The Commission considers the application for review of an action by delegated authority, denying a petition for reconsideration of the return of its application.

Mass Media—10—*Title:* Mutually exclusive applications of RKO General, Inc., for renewal of license of its six AM stations and six FM stations and 149 competing applications for new commercial AM and/or FM stations. *Summary:* The Commission will consider whether to adopt Memorandum Opinion and Orders designating the 161 applications for comparative hearings.

Mass Media—11—*Title:* The mutually exclusive applications of RKO General, Inc., for renewal of license of Station WHBQ–TV, Channel 13, Memphis, Tennessee, and 13 applications for a new commercial television station in Memphis on that channel. *Summary:* The Commission will consider the license renewal application of RKO General, Inc. for Station WHBQ–TV, Memphis, Tennessee, and 13 applicants seeking to displace RKO as the licensee of Channel 13. Also under consideration are petitions to deny the WHBQ–TV renewal application filed by certain viewers of the station and several consumer groups.

Mass Media—12—*Title:* Application for Review of Mass Media Bureau action filed by Katy Communications, Inc. *Summary:* The Commission will consider an Application for Review of the Mass Media Bureau action returning the low power television application of Katy Communications, Inc., for Channel 10, Cabery, Illinois, as defective.

Mass Media—13—*Title:* Application for review filed by Sue Gottfried and the California Association of the Physically Handicapped, Inc., of an action of the Mass Media Bureau approving the 1980 renewal application of Golden West Television, Inc. for KTLA–TV, Los Angeles, California, approving the application transferring control of the licensee from Orvon Gene Autry, individually, Orvon Gene Autry and Stanley, Co-executors of the Estate of Ina S. Autry, and The Signal Companies, Inc. to Golden West Television Acquisition Company, and denying Gottfried's and the Association's objections that KTLA-TV had not captioned sufficient amounts of programming for the hearing impaired and that the transferee has made no commitment to hire qualified handicapped persons. *Summary:* The Commission will consider Gottfried's and the California Assocation of the Physically Handicapped, Inc.'s joint application for review in which they contend that the Bureau erred in granting the renewal application and the transfer application. They assert that approval should have been withheld until assurances are given that substantial amounts of programming would be captioned and that affirmative action would be taken to hire qualified handicapped persons.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–29273 Filed 11–2–84; 3:01 pm]

BILLING CODE 6712–01–M

4

FEDERAL ENERGY REGULATORY COMMISSION

October 31, 1984.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5, U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: November 7, 1984 10:00 a.m.

PLACE: 825 North Capitol Street NE., room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda.

801st meeting—November 7, 1984, regular meeting (10:00 a.m.)

CAP–1. Project No. 2343–001, Potomac Edison Company

CAP–2. Project No. 7909–001, County of Allegheny, Pennsylvania

CAP–3. Project No. 472–005, Utah Power and Light Company

CAP–4. Project No. 7213–002, Northeast Hydro Incorporation
Project No. 8013–001, Small Hydro East

CAP–5. Project No. 8040–001, Cook Electric, Inc.
Project No. 8154–001, City of Yakima, Washington

CAP–6. Project No. 2696–002, Niagara Mohawk Power Corporation

CAP–7. Project Nos. 8194–001 and 002, James W. Caples

CAP–8. Project Nos. 8229–001 and 002, Cook Electric Incorporated

CAP–9. Project No. 7914–002, Allegheny Hydropower, Inc.

CAP–10. Project No. 5077–003, Mrs. Roberta B. Weil

CAP–11. Project No. 7172–001, Douglas Water Power Company

CAP–12. Project No. 8429–000, Aliceville Hydro Associates

CAP–13. Project No. 4905–003, Lost River Electric Cooperative, Inc.

CAP–14. Project No. 4356–001, Long Lake Energy Corporation
Project No. 5236–000, Essex County Industrial Development Agency
Project No. 5752–000, New York State Department of Environmental Conservation
Project No. 5760–000, International Paper Company
Project No. 5762–000, International Paper Company

CAP–15. Project No. 2306–002, Citizens Utilities Company

CAP–16. Docket No. ER84–541–001, Oklahoma Gas & Electric Company

CAP–17. Docket No. ER84–504–000, Allegheny Generating Company

CAP–18. Docket No. ER84–679–000, Florida Power Corporation

CAP–19. Docket No. ER84–613–000, Pacific Power & Light Company

CAP–20. Docket No. ER78–417–005, Kentucky Utilities Company

CAP–21. Docket No. EL84–14–000, the town of Highlands, North Carolina, Haywood Electric Membership Corporation, and North Carolina Electric Membership Corporation v. Nantahala Power & Light Company
Docket No. EL84–19–000, Western Carolina University v. Nantahala Power & Light Company
CAP–22. Docket No. ER84–276–000, Mississippi Power & Light Company
CAP–23. Docket Nos. ER83–427–000 and ER83–428–000, Utah Power & Light Company

Consent Miscellaneous Agenda

CAM–1. Omitted.
CAM–2. Omitted.
CAM–3. Docket No. RM79–76–323 (Texas–40), High-Cost Gas Produced From Tight Formations
CAM–4. Docket No. GP82–56–002, Amoco Production Company
CAM–5. Docket No. GP83–27–000, National Fuel Gas Supply Corporation
CAM–6. Docket No. GP83–14–000, Kansas Corporation Commission Section 102(c)(1)(C) NGPA Determinations, TXO Production Corporation, Zuercher No. 3 Gas Well, Muir "D" No. 1 Gas Well, Kansas Docket Nos. NGPA–K–81–1235 and NGPA–K–81–1236, J D Nos. 83–11339 and 83–11340
CAM–7. Docket No. GP80–23–003, Texas Gas Transmission Corporation
CAM–8. Docket No. RA81–69–000, Chevron U.S.A., Inc.
CAM–9. Docket No. FA85–01–000, Trunkline LNG Company

Consent Gas Agenda

CAG–1. Docket No. RP84–112–001, Midwestern Gas Transmission Company
CAG–2. Docket No. TA85–1–52–002 (PGA85–1A), Western Gas Interstate Company
CAG–3. Docket No. RP85–7–000, Texas Gas Transmission Corporation
CAG–4. Docket No. RP85–4–000, U–T Offshore System
CAG–5. Docket No. TA85–1–7–002, Southern Natural Gas Company
CAG–6. Omitted
CAG–7. Docket No. RP84–87–000, Mississippi River Transmission Corporation v. United Gas Pipe Line Company
CAG–8. (A) Docket No. RP83–65–006, Alabama-Tennessee Natural Gas Company
Docket Nos. TA84–2–4–001, CP84–50–003 and 004, Granite State Gas Transmission, Inc.
Docket Nos. TA84–2–001, 002, TA85–1–40–000, 001 and 002, Raton Natural Gas Company
Docket Nos. RP79–28–005, RP83–69–001 and 002, High Island Offshore System
Docket Nos. RP82–80–018, RP83–1–003, RP83–140–002 and CP82–542–007, ANR Pipeline Company
Docket No. TA84–2–37–003, Northwest Pipeline Corporation
Docket Nos. CP70–80–006 and CP79–80–033, Wyoming Interstate Company
Docket No. TA85–1–52–002, Western Gas Interstate Corporation
Docket Nos. TA84–2–16–001, 002, RP82–87–000 and RP84–95–001, National Fuel Gas Supply Corporation
CAG–8. (B) Docket Nos. RP84–61–001 and 003, National Fuel Gas Supply Corporation
CAG–9. Docket Nos. RP82–58–010, RP78–62–000, RP80–78–000, TA82–2–28–000, TA83–3–28–001, TA83–2–28–000 and TA83–2–28–005, Panhandle Eastern Pipeline Company
CAG–10. Docket Nos. CP84–50–003 and 004, Granite State Gas Transmission, Inc.
CAG–11. Docket No. RP82–115–000, Consolidated Gas Supply Corporation
CAG–12. Docket No. TA84–2–58–000, Texas Gas Pipe Line Corporation
CAG–13. Docket Nos. ST80–298–004, ST82–287–003, ST82–397–002, ST84–703–001 and ST84–847–001, Mississippi Fuel Company
CAG–14. Docket No. CI84–450–002, Diamond Shamrock Exploration Company
Docket No. CI84–454–001, Pennzoil Oil & Gas, Inc.
Docket No. CI84–573–001, TBP Offshore Company
CAG–15. Docket No. CI84–384–000, Gulf Oil Corporation
CAG–16. Docket Nos. RI74–188–038 and RI75–21–033, Independent Oil & Gas Association of West Virginia
CAG–17. Docket No. CP84–706–000, Washington Gas Light Company
CAG–18. Docket No. CP84–516–000, United Gas Pipe Line Company
CAG–19. Docket No. CP84–248–000, Tennessee Gas Pipeline Company, a division of Tenneco Inc. and Arkansas Louisiana Gas Company, a division of ARKLA, Inc.
CAG–20. Docket Nos. CP84–70–001 and 002, East Tennessee Natural Gas Company
CAG–21. Docket No. RI77–32–002, Disputed Zone Offshore Louisiana

I. Licensed Project Matters
P–1. Reserved
II. Electric Rate Matters
ER–1. Docket No. ER84–574–001, Holyoke Water Power Company and Holyoke Power and Electric Company

Miscellaneous Agenda

M–1. Docket Nos. RM84–6–003, 004, 005 and 006, Refunds Resulting From Btu Measurement Adjustments
M–2. Reserved
I. Pipeline Rate Matters
RP–1. Reserved
II. Producer Matters
CI–1. Reserved
III. Pipeline Certificate Matters
CP–1. Docket No. CP84–561–000, Columbia Gas Transmission Corporation

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–29159 Filed 11–2–84; 9:02 am]

BILLING CODE 6717–01–M

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NATIONAL SCIENCE BOARD

DATE AND TIME: November 15, 1984, 1:30 p.m., open session. November 16, 1984, 9:00 a.m., closed session; 9:15 a.m. open session.

PLACE: National Science Foundation, Washington, D.C.

STATUS: Most of this meeting will be open to the public. Part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSIONS:

Thursday, November 15, 1984—1:30 p.m.

1. Program Review—Science Resources Studies

Friday, November 16, 1984—9:15 a.m.

5. Grants, Contracts, and Programs
6. Minutes—October 1984 Meeting
7. Chairman's Report
8. Director's Report
9. Proposed Amendment to Statute Governing the Alan T. Waterman Award
10. Report of Ad Hoc Committee on Excellence in Science and Engineering
11. Presentation on Engineering
12. Reports of Board Committees
13. Board Representation at Advisory Committee and Other Meetings
14. Other Business
15. Next Meetings

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

Friday, November 16, 1984—9:00 a.m.

2. Minutes—October 1984 Meeting
3. NSB and NSF Staff Nominees
4. Grants, Contracts, and Programs

Margaret L. Windus,

Executive Officer.

[FR Doc. 84–29255 Filed 11–2–84; 2:52 pm]

BILLING CODE 7555–01–M

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SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 5, 1984, at 450 Fifth Street NW., Washington, D.C.

Closed meetings will be held on Tuesday, November 6, 1984, at 10:00 a.m. and on Thursday, November 8, 1984 following 2:30 p.m. open meeting. Open meetings will be held on Wednesday, November 7, 1984, at 2:30 p.m., and on Thursday, November 8, 1984, at 10:00 a.m. and 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 6, 1984, at 10:00 a.m., will be:

Formal orders of investigation.
Recommendation regarding enforcement matter.
Regulatory matter bearing enforcement implications.
Institution of administrative proceeding of an enforcement nature.

The subject matter of the closed meeting scheduled for Thursday, November 8, 1984, following the 2:30 p.m. open meeting, will be: Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, November 7, 1984, at 2:30 p.m., will be:

The Commission, as part of its active oversight of private sector standard-setting activities, will meet with members of the Financial Accounting Standards Board regarding the Board's technical agenda and other items of mutual interest. In addition to a discussion of major projects on the FASB's technical agenda, aspects of the conceptual framework project, accounting problems of financial institutions, and the FASB's new approach to providing timely guidance are expected to be discussed. Timely guidance procedures now in place include monthly meetings of an emerging issues task force and expanded use of FASB technical bulletins. These procedures are designed to increase the FASB's effectiveness in providing accounting and reporting guidance on emerging accounting issues. For further information, please contact Robert Kueppers at (202) 272–2130.

The subject matter of the open meeting scheduled for Thursday, November 8, 1984, at 10:00 a.m., will be:

1. Consideration of whether to grant or deny a request by the National Association of Securities Dealers, Inc. ("NASD") for reconsideration of a Commission finding made in a fee dispute between the NASD and the Institutional Networks Corporation ("Instinet") regarding the terms of Instinet's access to full NASDAQ quotation information. For further information, please contact William W. Uchimoto at (202) 272–2409.
2. Consideration of whether to propose for public comment amendments to Form N–1A under the Investment Company Act of 1940 to consolidate all narrative information in mutual fund prospectuses concerning significant expenses and add a tabular presentation of the major expense items. For further information, please contact Mary Margaret W. Hammond at (202) 272–3045.
3. Consideration of whether to adopt on a temporary basis and propose for public comment Rule 6e–3(T) and related technical amendments to a rule and form under the Investment Company Act of 1940 which would permit insurance company separate accounts to sell a new type of insurance product known as flexible premium variable life insurance. For further information, please contact Robert W. Plaze at (202) 272–2622.
4. Consideration of whether to grant an application filed by Vanguard Special Tax-Advantaged Retirement Fund, et al. requesting an order of the Commission, pursuant to Sections 6(c) and 17(d) and Rule 17d–1 of the Investment Company Act of 1940, to permit the Vanguard Special Tax-Advantaged Retirement Fund to acquire shares of funds within the Vanguard Group of Investment Companies in excess of the limitations imposed by Section 12(d)(1) of the Act, and to permit certain affiliated transactions otherwise prohibited by Section 17. On September 11, 1984, the Commission authorized issuance of a notice on the application but requested a resubmission of the application for its reconsideration after expiration of the notice period and after receipt from Applicants of additional supporting information. For further information, please contact Mary A. Cole at (202) 272–3023.

The subject matter of the open meeting scheduled for Thursday, November 8, 1984, at 2:30 p.m., will be:

Oral argument on appeals by Raymond L. Dirks and John D. Sullivan, general partners of John Muir & Company, a registered broker-dealer, from the decision of an administrative law judge. For further information, please contact Daniel J. Savitsky at (202) 272–7400.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: William Fowler at (202) 272–3077.

November 1, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–29196 Filed 11–2–84; 9:07 am]

BILLING CODE 8010–01–M

federal register

Tuesday
November 6, 1984

Part II

Federal Maritime Commission

46 CFR Parts 500, 501, 502, 503, 504, and 505

General and Administrative Provisions; Final Rules in Subchapter A

FEDERAL MARITIME COMMISSION

46 CFR Parts 500, 501, 502, 503, 504, and 505

[Docket No. 84-20 for Part 505]

Final Rules in Subchapter A; General and Administrative Provisions

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: The Federal Maritime Commission is making substantive changes to its standards of conduct for employees in Part 500 and in § 502.32 and purely technical, non-substantive changes to the rest of Subchapter A involving general and administrative rules of the agency. The parts affected by this rulemaking are Part 500 [Employee Responsibilities and Conduct]; Part 501 [Official Seal]; Part 502 [Rules of Practice and Procedure]; Part 503 [Public Information]; Part 504 [Procedures for Environmental Policy Analysis]; and Part 505 [Compromise, Assessment and Settlement of Civil Penalties]. The new Part 505 finalizes a previously published proposed rule. Except for Part 507, a new proposed rule involving handicapped persons employed by the agency, and which will not become final until 1985, the revision of all of Subchapter A is now completed.

DATE: Effective December 6, 1984.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Revisions to all of Subchapter A were previously made by publication of a final rule on April 23, 1984 [40 FR 16994] and a proposed rule completely revising Part 505 [compromise of penalties] was published on May 3, 1984 [49 FR 18874] with a correction on June 1, 1984 [49 FR 22837].

In addition to making necessary, substantive changes to Part 500 [standards of conduct], as well as to parallel provisions in § 502.32, and finalizing the proposed rule on Part 505, a further review of all regulations in conjunction with the passage of the Shipping Act of 1984 on March 20, 1984, has revealed the necessity for further technical changes. These rules, therefore, finalize all of Subchapter A under the revision program, i.e., Parts 500-505, inclusive, and are being set forth here in their entirety. [New Part 507, now a proposed rule dealing with handicapped employees, will become final in 1985.]

Accordingly, extensive changes in form beyond those made in the previous final rules are being made to improve style, readability and understandability. No changes in substance, however, are included, except in Part 500 and its counterpart in § 502.32. Because most of the parts affected involve purely internal agency matter and/or the changes are merely technical or stylistic, the rules are promulgated as final, without the need for comments, although their effective date will be 30 days after publication in the Federal Register.

The technical and style changes to all the rules reflect changes in nomenclature and Commission organization, correction of typographical errors and removal of superfluous verbiage. Outdated and obsolete provisions have also been deleted. To assist the user, various subdivisions of sections have been restructured and renumbered to facilitate citation. Also changed, were feasible, are citations to other laws required by recodifications and other statutory changes; references to the obsolete General Order system; "Provided, howevers"; and gender specific terms.

A part-by-part analysis of other changes follows:

Part 500—Employee Responsibilities and Conduct

The revisions to Part 500 are being made in order to clarify the Commission's general Standards of Conduct. Prior to this revision, the Commission's regulations reflected almost word for word the language used in President Johnson's Executive Order 11222 of May 8, 1965 and the implementing regulations of the Office of Personnel Management at 5 CFR Part 735. The precise application of some of these regulations to the Commission has not always been clear. Thus, this revision constitutes a clarification of existing policy, and, in some respects, substantive changes. It also implements certain requirements of the Ethics in Government Act.

The revisions of Part 500 are deemed necessary in order to ensure the integrity of the agency and its individual employees, to conform to the spirit of the Executive Order, and to provide maximum guidance to Commission employees.

Part 501—Official Seal of the Federal Maritime Commission

The only changes made to this part are statutory citations to reflect changes in law.

Part 502—Rules of Practice and Procedure

The major changes to this part reflect the changes to Part 500 involving practice by former Commission employees before the F.M.C. in section 502.32 which tracks the new restrictions in § 500.12, as well as structural changes to, among others, Subparts S and T, to accommodate the policy of the Shipping Act of 1984 to allow claims or complaints against any person who may have violated the provisions of the new statute.

Otherwise, changes to this part clarify existing regulations, as well as, reflect new provisions of the Shipping Act of 1984 and style and technical changes referred to above. Some forms have been revised to reflect some of the changes in procedure occasioned by the Shipping Act of 1984.

Part 503—Public Information

In addition to style and technical changes described above, § 503.91, containing a table of OMB control numbers under the Paperwork Reduction Act for all parts in Chapter IV, is being deleted because such numbers will now appear in the final section for each individual part affected.

Part 504 [Previously Part 547]—Procedures for Environmental Policy Analysis

In this part, no changes other than technical and style changes described above are being made.

Part 505—Compromise, Assessment, Settlement and Collection of Civil Penalties

This part was the subject of proposed rulemaking in Docket No. 84-20, published in the Federal Register on May 3, 1984 (49 FR 18874) with comments invited. The only comment received was from the National Maritime Council which stated that the proposed rule, if finalized, "... should allow a more expeditious and fair handling of penalty claims." Accordingly, no substantive changes are being made. A note has been added at the end of the rule indicating that the part is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

The Federal Maritime Commission has determined that these rules are not "major rules" as defined in Executive Order 12291 dated February 17, 1981, because none of them will result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies that none of these rules will have significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects

46 CFR Part 500

Conduct standards, Government employees.

46 CFR Part 501

Seals and insignias.

46 CFR Part 502

Administrative practice and procedure, Reporting and recordkeeping and requirements.

46 CFR Part 503

Classified information, Freedom of Information, Privacy, Sunshine Act.

46 CFR Part 504

Energy conservation, Environmental protection, Reporting and recordkeeping requirements.

46 CFR Part 505

Fines and penalties.

Corrections

These final rules are subject to review and editing of form before publication in the Code of Federal Regulations. Users are requested to notify the Commission of any omissions and typographical-type errors in order that corrections can be made before the Commission's CFR book goes to press in January, 1985.

Therefore, for the reasons discussed in the preamble and pursuant to the authority set forth in the Authority Citation for each part, Title 46, Code of Federal Regulations, Parts 500, 501, 502, 503, 504 and 505 are revised to read as follows:

PART 500—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.

500.101 Purpose.
500.102 Definitions.
500.103 [Reserved]
500.104 [Reserved]
500.105 Interpretation and advisory service.
500.106 Reviewing statements and reporting conflicts of interest.
500.107 Disciplinary and other remedial action.
500.108 Conflicts of interest.
500.109 Rereading the Standards of Conduct.

Subpart B—General Standards of Conduct

500.201 Proscribed actions.
500.202 Gifts, entertainment, and favors.
500.203 Outside employment and other activity.
500.204 Financial interests.
500.205 Use of Government property.
500.206 Misuse of information.
500.207 Indebtedness.
500.208 Gambling, betting, and lotteries.
500.209 General conduct prejudicial to the Government.
500.210 Miscellaneous statutory provisions.
500.211 Release of confidential or nonpublic information.
500.212 Post employment conflict of interest; restriction of activities of certain Federal employees; procedures.

Subpart C—Special Government Employees Standards of Conduct

500.301 Application to special Government employees.
500.302 Special Government employees—Use of Government employment.
500.303 Special Government employees—Use of inside information.
500.304 Special Government employees—Coercion.
500.305 Special Government employees—Gifts.

Subpart D—Statements of Employment and Financial Interests; Executive Personnel Financial Disclosure Reports

500.401 [Reserved]
500.402 [Reserved]
500.403 Persons required to submit Statements of Employment and Financial Interests.
500.404 [Reserved]
500.405 Time and place for submission of Statements of Employment and Financial Interests.
500.406 Annual Statements and Termination Reports.
500.407 Interests to be reported in Statements of Financial Interests and Annual Statements.
500.408 Information not known by the person reporting.
500.409 Information exempted.
500.410 Confidentiality of Statements.
500.411 Conduct, employment or holdings otherwise prohibited and reporting otherwise required by law.
500.412 Executive Personnel Financial Disclosure Reports (SF 278).

Authority: 46 U.S.C. app. 1111, 18 U.S.C. 207, 208; 5 CFR Part 735; E.O. 11222 of May 8, 1965, 30 FR 6469, (3 CFR, 1965 Supp.).

Subpart A—General Provisions

§ 500.101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. Reorganization Plan No. 7 of 1961, which established the Federal Maritime Commission, and section 201(b) of the Merchant Marine Act of 1936 (46 U.S.C. app. 1111(b)), provide that officials or employees of the Commission are prohibited from employment with, or to have any pecuniary interest in, or hold any official relationship with, carriers by water, shipbuilder contractors, or other persons, firms, associations or corporations with whom the Commission may have business relations. The following sections of this part are in accordance with the requirements of the Office of Personnel Management's regulations (5 CFR 735) under Executive Order 11222, dated May 8, 1965.

§ 500.102 Definitions.

For the purposes of this part:

(a) "*Commission*" means the Federal Maritime Commission unless otherwise designated.

(b) "*Employee*" means an employee of the Commission but does not include a special Government employee.

(c) "*Executive Order*" means Executive Order 11222 of May 8, 1965.

(d) "*OPM*" means the United States Office of Personnel Management.

(e) "*Person*" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, a foreign government or any other organization or institution.

(f) "*Special Government employee*" means a "special Government employee" as defined in section 202 of Title 18, United States Code, who is employed in the executive branch, but does not include a member of the uniformed services as defined in section 2101 of Title 5, United States Code.

§ 500.103 [Reserved]

§ 500.104 [Reserved]

§ 500.105 Interpretation and advisory service.

(a) The Chairman of the Commission shall designate an employee with the appropriate legal experience and in whom he or she has complete personal confidence to be the Counselor for the Commission on matters in connection

with the regulations in this part. The Counselor shall also serve as the Commission's designee to OPM on matters covered by the regulations in this part. The Counselor shall exercise responsibility for effectuation and coordination of the Commission's regulations and provide counseling and interpretations on questions of conflicts of interest and other matters covered by the regulations in this part.

(b) The Chairman of the Commission shall designate one or more Deputy Counselors who shall be qualified and in a position to give authoritative advice and guidance on questions of conflicts of interest and on other matters covered by this part.

(c) Employees and special Government employees shall be notified of the availability of counseling services and of how and where these services are available. This notification shall be made within ninety (90) days after approval of the regulations in this part and periodically thereafter. In the case of a new employee or special Government employee appointed after this notification, notification shall be made at the time of his or her entrance on duty.

§ 500.106 Reviewing statements and reporting conflicts of interest.

(a) There is hereby established a system for the review of Statements of Employment and Financial Interests, Annual Statements, and Executive Personnel Financial Disclosure Reports submitted under Subpart D of this part. This system of review is designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees or special Government employees.

(b) The Counselor or Deputy Counselor shall review each such Statement and Report. Whenever it appears to the Counselor that a Statement or Report contains evidence of a conflict of interest, he or she shall notify the person signing that statement and shall discuss with him or her the information which gives rise to the apparent or real conflict and offer him or her an opportunity to explain the conflict or appearance of conflict. If the conflict or appearance of conflict is not resolved after this discussion, the information concerning the conflict or appearance of conflict shall be reported to the Chairman of the Commission by the Counselor.

§ 500.107 Disciplinary and other remedial action.

(a) A violation of the regulations in this part by an employee or special Government employee may be cause for an appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) If after consideration of the explanation of the employee as provided in § 500.106, and the Chairman decides that remedial action is required, the Chairman shall take immediate action to end the conflicts or appearance of conflicts of interest. Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, executive orders, and regulations and may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his or her conflicting interest;

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

§ 500.108 Conflicts of interest.

A Commission employee's or special Government employee's financial or pecuniary interest in an entity regulated by the Commission [such as, e.g., ocean common carriers, ocean freight forwarders and marine terminal operators (including their parent companies)], shall be deemed to create a conflict of interest. A Commission employee or special Government employee shall also be deemed to have a conflict of interest if a member of his or her immediate household is employed by an entity regulated by the Commission and his or her professional duties or assignments relate to or involve that family member's employer.

§ 500.109 Rereading the Standards of Conduct.

It is the responsibility of every Commission employee and special Government employee to become familiar with the Commission's Standards of Conduct and to reread them at least once a year.

Subpart B—General Standards of Conduct

§ 500.201 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 500.202 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are regulated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Exceptions to paragraph (a) of this section are as follows:

(1) This section shall not be construed to proscribe conduct involving obvious family or personal relationships (such as those between the parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors.

(2) Under this section, Commission employees are permitted to accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(3) Under this section, employees are permitted to accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(4) Under this section employees shall be permitted to accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(c) An employee shall not solicit contributions from another employee for a gift to an official superior, make a donation as a gift to an official supervisor, or accept a gift from an employee receiving less pay than himself or herself (5 U.S.C. 7351), except that this paragraph does not prohibit the use of a completely voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by

the Constitution and by section 7342 of Title 5, United States Code.

(e) Neither this section nor § 500.203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General, dated March 7, 1967 (46 Comp. Gen. 689).

§ 500-203 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform his or her Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government (18 U.S.C. 209). This paragraph does not apply to special Government employees.

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive Order, or the regulations in this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, and writing (including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of OPM or Board of Examiners for the Foreign Service), that is dependent on information obtained as a result of the employee's Government employment, except when that information has been made available to the general public or will be made available on request, or when the Chairman gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the Executive Order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) [Reserved]

(e) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law; or

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 500-204 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest in an entity regulated by the Commission as set forth in § 500.108;

(2) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her Government duties and responsibilities; or

(3) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, so long as it is not prohibited by law, the Executive Order, the regulations contained in 5 CFR Part 735, or the regulations in this part.

§ 500.205 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her.

§ 500.206 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 500.203(c), directly or indirectly use, or allow the use of, official information obtained through or in connection with his or her Government employment which has not been made available to the general public.

§ 500.207 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee, or reduced to judgment by court, or one imposed by law, such as Federal, State or local taxes; and "in a proper and timely manner" means in a manner which the Commission determines does not, under the circumstances, reflect adversely on the Government as his or her employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Commission to determine the validity or amount of the dispute debt.

§ 500.208 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 or similar Commission approved activities.

§ 500.209 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 500.210 Miscellaneous statutory provisions.

Each employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as an employee of this Commission and of the Government. The attention of Commission employees, is directed to the outside employment restriction in 46 U.S.C. app. 1111(b) and the following statutory provisions relating to ethical and other conduct.

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72A Stat. B12

the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibition against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibition against certain political activities in Subchapter III of Chapter 73 of Title 5 U.S.C., and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

§ 500.211 Release of confidential or nonpublic information.

An employee shall not divulge to any unauthorized person any nonpublic or confidential Commission document or information, including the results of portions of Commission meetings closed to the public pursuant to 76 CFR Part 503, Subpart H, and comments made, information divulged or memoranda prepared incidental to such closed meetings, except pursuant to the procedures of 5 U.S.C. 552, 552a and 552b and 46 CFR Part 503 or as specifically directed by the Commission. Employees are also reminded of the provisions of §§ 555.5 and 555.6 of this Chapter, which relate to confidentiality of information obtained in the course of official Commission audits, and which provide for penalties for disclosure of confidential information.

§ 500.212 Post employment conflict of interest; restriction of activities of certain Federal employees; procedures.

Title V of the Ethics in Government Act proscribes certain activities by certain former federal employees (18 U.S.C. 207). The full text of the statute, OPM regulations and examples of how the restrictions and basic procedures apply are available from the Ethics Counselor. In summary, as applied to former Commission employees, the restrictions and basic procedures are as follows:

(a) *Restrictions.* (1) No former Commission employee may represent in any formal or informal appearance or make any oral or written communication with intent to influence a U.S. Government agency in a particular matter involving a specific party or parties in which the employee participated personally and substantially while with the Commission.

(2) No former Commission employee may, within two years of terminating Commission employment, act as a representative in the manner described in paragraph (a) of this section, as to a particular matter which was actually pending under the employee's official responsibility within one year prior to termination of the employment.

(3) Former senior Commission employees (defined as Commissioners and members of the Senior Executive Service as designated by the Office of Government Ethics under 18 U.S.C. 207(d)(1)) may not, for two years after terminating Commission employment, assist in representing a person by personal presence at an appearance before the Government on a matter in which the former employee had participated personally and substantially while at the Commission.

(4) Former senior Commission employees, as defined in paragraph (c) of this section, are barred for one year from representing parties before the Commission or communicating with intent to influence the Commission, regardless of prior involvement in the particular proceeding.

(b) *Prior consent for appearance.* (1) Prior to making any appearance, representation or communication described in paragraph (a) of this section, and, in addition to the requirements of Subpart B of the Commission's Rules of Practice (§§ 502.21–502.32 of this chapter), every former employee must apply for and obtain prior written consent of the Commission for each proceeding or matter in which such appearance, representation or communication is contemplated. Such consent will be given only if the Commission determines that the appearance, representation or communication is not prohibited by the Act, this section or other provisions of this chapter.

(2) To facilitate the Commission's determination that the intended activity is not prohibited, applications for written consent shall:

(i) Be directed to the Commission, state the former connection of the applicant with the Commission and date of termination of employment, and identify the matter in which the applicant desires to appear; and

(ii) Be accompanied by an affidavit to the effect that the matter for which consent is requested is not a matter in which the applicant participated personally and substantially while at the Commission and, as made applicable by paragraph (a) of this section, that the particular matter as to which consent is requested was not pending under the applicant's official responsibility within one year prior to termination of employment and that the matter was not one in which the former employee had participated personally and substantially while at the Commission. The statements contained in the affidavit shall not be sufficient if disproved by an examination of the files and records of the case.

(3) The applicant shall be promptly advised as to his or her privilege to appear, represent or communicate in the particular matter, and the application, affidavit and consent, or refusal to consent, shall be filed by the Commission in its records relative thereto.

(c) *Basic procedures for possible violations.* The following basic guidelines for administrative enforcement of restrictions on post employment activities are designed to expedite consultation with the Director of the Office of Government Ethics as required pursuant to section 207(j) of Title 18, United States Code.

(1) *Delegation.* The Chairman may delegate his or her authority under this subpart.

(2) *Initiation of administrative disciplinary hearing.* (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice. The Commission shall coordinate any investigation or administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Commission that it does not intend to initiate criminal prosecution.

(ii) Whenever the Commission has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated any provision of paragraph (a) of this section or 18 U.S.C. 207 (a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in paragraph (c)(3) of this section.

(3) *Adequate notice.* (i) The Commission shall provide a former Commission employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

(ii) Notice to the former Commission employee must include:

(A) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Commission employee to prepare an adequate defense;

(B) Notification of the right to a hearing; and

(C) An explanation of the method by which a hearing may be requested.

(4) *Presiding official.* (i) The presiding official at a proceeding under this section shall be an individual to whom the Chairman has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(ii) The examiner must be a Commissioner (other than the Chairman), an administrative law judge, or an attorney employed by the Commission and shall be provided with appropriate administrative and secretarial support by the Commission.

(iii) The presiding official shall be impartial. No individual who has participated in any manner in the decision to initiate a proceeding may serve as an examiner in that proceeding.

(5) *Time, date and place.* (i) The hearing shall be conducted at a reasonable time, date, and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Commission employee's need for:

(A) Adequate time to prepare a defense properly, and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel;

(ii) To introduce and examine witnesses and to submit physical evidence;

(iii) To confront and cross-examine adverse witnesses;

(iv) To present oral argument; and

(v) To receive a transcript or recording of the proceedings, on request.

(7) *Burden of proof.* In any hearing under this subpart, the Commission has the burden of proof and must establish substantial evidence of a violation.

(8) *Initial decision.* (i) The examiner shall make a determination on matters exclusively of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the Commission, either party may appeal the decision solely on the record to the Chairman. The Chairman shall base his or her decision solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the Chairman modifies or reverses the initial decision, he or she shall specify such findings of fact and conclusions of law as are different from those of the hearing examiner.

(9) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed five (5) years, which may be accomplished by directing Commission employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section may seek judicial review of the administrative determination.

(11) *Consultation and review.* The procedures for administrative enforcement set forth in this section have been reviewed by the Director of the Office of Government Ethics.

Subpart C—Special Government Employees Standards of Conduct

§ 500.301 Application to special Government employees.

Unless specifically excepted by rule or by the Chairman of the Commission, the General Standards of Conduct contained in subpart B hereof (§§ 500.201 to 500.212), apply to special Government employees. Each special Government employee shall acquaint himself or herself with the General Standards, with each statute that relates to his or her ethical and other conduct as a special Government employee of the Commission and the Government, and with the following, minimum standards of this subpart governing the ethical and other conduct of special Government employees.

§ 500.302 Special Government employees—Use of Government employment.

A special Government employee shall not use his or her Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself, herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 500.303 Special Government employees—Use of inside information.

Except as provided in § 500.203(c), a special Government employee shall not use inside information obtained as a result of his or her Government employment for private gain for himself, herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business or financial ties. For the purpose of this paragraph, "inside information" means information obtained under Government authority which has not become part of the body of the public information.

§ 500.304 Special Government employees—Coercion.

A special Government employee shall not use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself, herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 500.305 Special Government employees—Gifts.

Except as provided in § 500.203(b), a special Government employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the Commission, anything of value as a gift, gratuity, loan, entertainment, or favor for himself, herself or another person, particularly one with whom he or she has family, business, or financial ties.

Subpart D—Statements of Employment and Financial Interests; Executive Personnel Financial Disclosure Reports

§ 500.401 [Reserved]

§ 500.402 [Reserved]

§ 500.403 Persons required to submit Statements of Employment and Financial Interests.

(a) The Chairman, the Commissioners, and all employees and special Government employees of the Commission, without exception, shall file Statements of Employment and Financial Interests and Annual Statements.

(b) Any employee or special Government employee who thinks his or her position has been improperly included under these regulations as one requiring the submission of a Statement of Employment and Financial Interests and Annual Statements is entitled to a review of this determination.

§ 500.404 [Reserved]

§ 500.405 Time and place for submission of Statements of Employment and Financial Interests.

All Statements of Employment and Financial Interests shall be submitted to the Counselor designated under § 500.105 within thirty (30) days of the effective date of the employee's appointment, except that special Government employees shall submit such Statements on or prior to the effective date of their appointment.

§ 500.406 Annual Statements and Termination Reports.

(a) Changes in, or additions to, employment and financial interests shall be reported in an Annual Statement to be filed no later than May 15 of each year, the reporting period being the previous calendar year, except that special Government employees shall submit such Annual Statements no later than fifteen (15) calendar days following any change in, or addition to, their employment or financial interests.

(b) Notwithstanding the filing of the Annual Statement required by this section, each employee and special Government employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of section 208 of Title 18, United States Code, or Subpart B of this part.

(c) A Termination Report must also be filed upon an employee's termination of employment, the reporting period being the time which has not been covered by the previous initial or supplementary statement.

§ 500.407 Interests to be reported in Statements of Financial Interests and Annual Statements.

Each Statement of Employment and Financial Interests and each Annual Statement shall include all the employment and financial interests of the person reporting, as well as all employment and financial interests of such person's spouse, minor child, or other member of the immediate household. For the purposes of this section, "members of the immediate household" means those blood relatives of the person reporting who are residents of the person's household. With respect to each position or financial interest reported in the Statement of Employment and Financial Interests and the Annual Statements, the person reporting shall specify whether such position or financial interest is held by: (a) The person reporting, (b) the spouse, (c) a minor child, or (d) a blood relative residing in the household.

§ 500.408 Information not known by the person reporting.

If any information required to be included in a Statement of Employment and Financial Interests or an Annual Statement, including holdings placed in trust, is not known to the person reporting, but is known to another person, the person reporting shall request such other person to submit information on his or her behalf.

§ 500.409 Information exempted.

The regulations in this subpart do not require a person to submit any information in an Annual Statement of Employment and Financial Interests or in an Annual Statement relating to any connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization not conducted as a business enterprise. For the purpose of this section, education and other institutions doing research and development or related work involving grants of money from, or contracts with, the Government are deemed "business enterprises" and are required to be included in a person's Statement of Employment and Financial Interests and in the Annual Statement.

§ 500.410 Confidentiality of Statements.

The Commission shall hold each Statement of Employment and Financial Interests, and each Annual Statement, in the strictest confidence. The Commission shall not disclose any information contained in such Statements, except as provided by law. To ensure confidentiality, the Counselor authorized in § 500.105 to retain and review the Statements, shall be the sole custodian of the Statements and shall not disclose or authorize disclosure of information contained therein, except to carry out the purposes of this part.

§ 500.411 Conduct, employment or holdings otherwise prohibited and reporting otherwise required by law.

The submission of a Statement of Employment and Financial Interests or Annual Statement, as required by this subpart, does not in any way excuse the person submitting such Statement, from violations of the criminal provisions of section 208 of Title 18, United States Code, the provisions of section 201(b) of the Merchant Marine Act, 1936, (46 U.S.C. 1111(b)) or the provisions of Subpart B of this Part. Moreover, the submission of any such Statement is in addition to, and not in substitution for, or in derogation of, any similar reporting requirement imposed by law, order, or regulation.

§ 500.412 Executive Personnel Financial Disclosure Reports (SF 278).

(a) *Background.* The Ethics in Government Act of 1978 (Pub. L. 95-521) (the "Act") prescribes a public financial disclosure reporting requirement for certain officers and employees in addition to other requirements of this subpart. The requirements and procedures are set forth in detail in the Act as well as in implementing

regulations of the Office of Government Ethics (5 CFR Part 734). This section will not reiterate these detailed requirements nor the instructions for filing that are contained in the Executive Personnel Financial Disclosure Report (SF 278).

(b) *Employees Required to File.* The following Commission employees are required to file the Executive Personnel Financial Disclosure Report:

(1) The five Commissioners;

(2) Officers and employees (including special Government employees) who have served in their position for sixty-one (61) days or more during the preceding calendar year, whose positions are classified and paid at GS–16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the rate for GS–16. This category includes employees of the Senior Executive Service as designated by the Office of Government Ethics under 18 U.S.C. 207(d)(1).

(3) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16;

(4) Administrative law judges;

(5) Employees in the excepted service in positions which are of a confidential or policymaking character including confidential assistants to the Commissioners, unless their positions have been excluded by the Director of the Office of Government Ethics;

(6) The Designated Agency Ethics Counselor.

(c) *Time of Filing.* (1) Initial appointment—Within five (5) days after transmittal by the President to the Senate of the nomination to a position described in paragraph (b)(1) of this section or within thirty (30) days after first assuming a position described in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), or (b)(6) of this section, a SF 278 must be filed.

(2) *Incumbents.* No later than May 15 annually, a SF 278 must be filed by incumbents of any of the positions listed in Paragraph (b) of this section.

(3) *Terminations.* No later than thirty (30) days after an incumbent of a position listed in Paragraph (b) of this section terminates that position, the individual shall file a SF 278.

(d) *Place of Filing.* All reports required to be filed by this seciton shall be submitted on or before the due date to the designated Agency Ethics Counselor.

(e) *Where to Seek Help.* To seek assistance in completing the Executive Personnel Financial Disclosure Report, an employee may contact the Commission Ethics Counselor or the Deputy Ethics Counselor.

(f) *Failure to Submit Report.* Falsification of, or knowing or willful failure to file or report information required to be reported by section 202 of the Act may subject the individual to a civil penalty and to internal disciplinary action, as well as criminal penalties under 18 U.S.C. 1001.

PART 501—OFFICIAL SEAL OF THE FEDERAL MARITIME COMMISSION

Sec.
501.1 Purpose.
501.2 Description.
501.3 Design.

Authority: 46 U.S.C. app. 1111 and 1114; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961.

§ 501.1 Purpose.

To prescribe and give notice of the official seal of the Federal Maritime Commission.

§ 501.2 Description.

(a) Pursuant to section 201(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1111(c)), the Federal Maritime Commission hereby prescribes its official seal, as adopted by the Commission on August 14, 1961, the design of which is illustrated below and described as follows:

(1) A shield argent paly of six gules, a chief azure charged with a fouled anchor or; shield and anchor outlined of the third; on a wreath argent and gules, an eagle displayed proper; all on a gold disc within a blue border, encircled by a gold rope outlined in blue, and bearing in white letters the inscription "Federal Maritime Commission" in upper portion and "1961" in lower portion.

(2) The shield and eagle above it are associated with the United States of America and denote the national scope of maritime affairs. The outer rope and fouled anchor are symbolic of seamen and waterborne transportation. The date "1961" has historical significance, indicating the year in which the Federal Maritime Commission was created.

§ 501.3 Design.



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Authority: 5 U.S.C. 552, 553, 559; 18 U.S.C. 207; secs. 18, 20, 22, 27 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817, 820, 821, 826, 841a); secs. 6, 8, 9, 10, 11, 12, 14, 15, 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1705, 1707–1711, 1713–1716); sec. 204(b) of the Merchant Marine Act, 1936 (46 U.S.C. app. 1114(b)); and E.O. 11222 of May 8, 1965 (30 FR 6469).

Subpart A—General Information

§ 502.1 Scope of rules in this part.

The rules in this part govern procedure before the Federal Maritime Commission, hereinafter referred to as the "Commission," under the Shipping Act, 1916, Merchant Marine Act, 1920, Intercoastal Shipping Act, 1933, Merchant Marine Act, 1936, Shipping Act of 1984, Administrative Procedure Act, and related acts, except that Subpart R of this part does not apply to proceedings subject to sections 7 and 8 of the Administrative Procedure Act, which are to be governed only by Subparts A to Q inclusive, of this part. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. [Rule 1.]

§ 502.2 Mailing address; hours; filing of documents.

(a) Documents required to be filed in, and correspondence relating to, proceedings governed by this part should be addressed to "Federal Maritime Commission, Washington, D.C. 20573." The hours of the Commission are from 8:30 a.m. to 5 p.m., Monday to Friday, inclusive, unless otherwise provided by statute or executive order.

(b) Documents relating to matters pending before the Commission are to be filed with the Office of the Secretary, unless otherwise required by § 502.118(b)(4), in the case of exhibits in formal proceedings. Pleadings, correspondence or other documents relating to pending matters should not be submitted to the offices of individual Commissioners. Distribution to Commissioners and other agency personnel is handled by the Office of the Secretary, to ensure that persons in decision-making and advisory positions receive in a uniform and impersonal manner identical copies of submissions, and to avoid the possibility of ex parte communications within the meaning of § 502.11(b). These considerations apply to informal and oral communications as well, such as requests for expedited consideration. [Rule 2.]

§ 502.3 Compliance with rules or orders of Commission.

Persons named in a rule or order shall notify the Commission during business hours on or before the day on which such rule or order becomes effective whether they have complied therewith, and if so, the manner in which compliance has been made. If a change in rates is required, the notification shall specify the tariffs which effect the changes. [Rule 3.]

§ 502.4 Authentication of rules or orders of Commission.

All rules or orders issued by the Commission, in any proceeding covered by this part shall, unless otherwise specifically provided, be signed and authenticated by seal by the Secretary of the Commission in the name of the Commission. [Rule 4.]

§ 502.5 [Reserved]

§ 502.6 [Reserved]

§ 502.7 Documents in foreign languages.

Every document, exhibit, or other paper written in a language other than English and filed with the Commission or offered in evidence in any proceeding before the Commission under this part or in response to any rule or order of the Commission pursuant to this part, shall be filed or offered in the language in which it is written and shall be accompanied by an English translation thereof duly verified under oath to be an accurate translation. [Rule 7.]

§ 502.8 Denial of applications and notice thereof.

Except in affirming a prior denial or where the denial is self-explanatory, prompt written notice will be given of the denial in whole or in part of any written application, petition, or other request made in connection with any proceeding under this part, such notice to be accompanied by a simple statement of procedural or other grounds for the denial, and of any other or further administrative remedies or recourse applicant may have where the denial is based on procedural grounds. [Rule 8.]

§ 502.9 Suspension, amendment, etc., of rules in this part.

The rules in this part may, from time to time, be suspended, amended, or revoked, in whole or in part. Notice of any such action will be published in the **Federal Register**. [Rule 9.]

§ 502.10 Waiver of rules in this part.

Except to the extent that such waiver would be inconsistent with any statute, any of the rules in this part, except § 502.11 and § 502.153, may be waived by the Commission or the presiding officer in any particular case to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires. [Rule 10.]

§ 502.11 Disposition of improperly filed documents and ex parte communications.

(a) *Documents not conforming to rules.* Any pleading, document, writing or other paper submitted for filing which is rejected because it does not conform to the rules in this part shall be returned to the sender;

(b) *Ex parte communications.* (1) No person who is a party to or an agent of a party to any proceeding as defined in § 502.61 or who directly participates in any such proceeding and no interested person outside the Commission shall make or knowingly cause to be made to any Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any such proceeding, an ex parte communication relevant to the merits of the proceeding;

(2) No Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any agency proceeding, shall make or knowingly cause to be made to any interested persons outside the Commission or to any party to the proceeding or its agent or to any direct participant in a proceeding, an ex parte communication

relevant to the merits of the proceeding. This prohibition shall not be constructed to prevent any action authorized by paragraphs (b)(5), (b)(6) and (b)(7) of this section;

(3) "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or communications regarding purely procedural matters or matters which the Commission or member thereof, administrative law judge, or Commission employee is authorized by law or these rules to dispose of on an ex parte basis;

(4) Any Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any proceeding who receives, or who makes or knowingly causes to be made, an ex parte communication shall promptly transmit to the Secretary of the Commission:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses and memoranda stating the substance of all oral responses to the materials described in paragraphs (b)(4)(i) and (b)(4)(ii) of this section;

(5) The Secretary shall place the materials described in subparagraph (4) of this paragraph in the correspondence part of the public docket of the proceeding and may take such other action as may be appropriate under the circumstances;

(6) Upon receipt of an ex parte communication knowingly made or knowingly caused to be made by a party to a proceeding, the Commission or the presiding officer may, to the extent consistent with the interest of justice and the policy of the statutes administered by the Commission, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the making of such communication;

(7) An ex parte communication shall not constitute a part of the record for decision. The Commission or the presiding officer may, to the extent consistent with the interests of justice and the policy of the statutes administered by the Commission, consider a violation of paragraph (b) of this section sufficient grounds for a decision adverse to a party who has knowingly caused such violation to occur and may take such other action as may be appropriate under the circumstances. [Rule 11.]

Subpart B—Appearance and Practice Before the Commission

§ 502.21 Appearance.

(a) *Parties.* A party may appear in person or by an officer, partner, or regular employee of the party, or by or with counsel or other duly qualified representative, in any proceeding under the rules in this part. Any party or his or her representative may testify, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted.

(b) *Persons not parties.* One who appears in person before the Commission or a representative thereof, either by compulsion from, or request or permission of the Commission, shall be accorded the right to be accompanied, represented, and advised by counsel.

(c) *Special Requirement.* An appearance may be either general, that is, without reservation, or it may be special, that is, confined to a particular issue or question. If a person desires to appear specially, he or she must expressly so state when entering the appearance and, at that time, shall also state the questions or issues to which he or she is confining the appearance; otherwise; his or her appearance will be considered as general. [Rule 21.]

§ 502.22 Authority for representation.

Any individual acting in a representative capacity in any proceeding before the Commission may be required to show his or her authority to act in such capacity. [Rule 22.]

§ 502.23 Notice of appearance; written appearance; substitutions.

(a) Within twenty (20) days after service of an order or complaint instituting a proceeding, complainants, respondents, and/or petitioners named therein shall notify the Commission of the name(s) and address(es) of the person or persons who will represent them in the pending proceeding. Each person who appears at a hearing shall deliver a written notice of appearance to the reporter, stating for whom the appearance is made. All appearances shall be noted in the record. Petitions for leave to intervene shall indicate the name(s) and address(es) of the person or persons who will represent the intervenor in the pending proceeding if the petition is granted. If an attorney or other representative of record is superseded, there shall be filed a stipulation of substitution signed both by the attorney(s) or representative(s) and by the party, or a written notice from the client to the Commission.

(b) A form of Notice of Appearance is set forth in Exhibit No. 1 to this subpart. This form also contains a request and authorization for counsel to be notified immediately of the service of decisions of the presiding officer and the Commission by collect telephone call or telegram. Copies of this form may be obtained from the Office of the Secretary. [Rule 23.]

§ 502.24 Practice before the Commission defined.

(a) Practice before the Commission shall be deemed to comprehend all matters connected with the presentation of any matter to the Commission, including the preparation and filing of necessary documents, and correspondence with and communications to the Commission, on one's own behalf or representing another. (See § 502.32).

(b) The term "Commission" as used in this subpart includes any bureau, division, office, branch, section, unit, or field office of the Federal Maritime Commission and any officer or employee of such bureau, division, office, branch, section, unit, or field office. [Rule 24.]

§ 502.25 Presiding officer defined.

"Presiding officer" means and shall include (a) any one or more of the members of the Commission (not including the Commission when sitting as such), (b) one or more administrative law judges or (c) one or more officers authorized by the Commission to conduct nonadjudicatory proceedings when duly designated to preside at such proceedings. (See Subpart J of this part.) [Rule 25.]

§ 502.26 Attorneys at law.

Attorneys at law who are admitted to practice before the Federal courts or before the courts of any State or Territory of the United States may practice before the Commission. An attorney's own representation that he is such in good standing before any of the courts herein referred to will be sufficient proof thereof, if made in writing and filed with the Secretary. [Rule 26.]

§ 502.27 Persons not attorneys at law.

(a) Any person who is not an attorney at law may be admitted to practice before the Commission if he or she is a citizen of the United States and files proof to the satisfaction of the Commission that he or she possesses the necessary legal, technical, or other qualifications to render valuable service before the Commission and is otherwise competent to advise and assist in the

presentation of matters before the Commission. Applications by persons not attorneys at law for admission to practice before the Commission shall be made on the forms prescribed therefor, which may be obtained from the Secretary of the Commission, and shall be addressed to the Federal Maritime Commission, Washington, D.C., 20573, and shall be accompanied by a fee as required by § 503.43(h) of this chapter.

(b) No person who is not an attorney at law and whose application has not been approved shall be permitted to practice before the Commission.

(c) Paragraph (b) of this section and the provisions of §§ 502.28, 502.29 and 502.30 shall not apply, however, to any person who appears before the Commission on his or her own behalf or on behalf of any corporation, partnership, or association of which he or she is a partner, officer, or regular employee. [Rule 27.]

§ 502.28 Firms and corporations.

Practice before the Commission by firms or corporations on behalf of others shall not be permitted. [Rule 28.]

§ 502.29 Hearings.

The Commission, in its discretion, may call upon the applicant for a full statement of the nature and extent of his or her qualifications. If the Commission is not satisfied as to the sufficiency of the applicant's qualifications, it will so notify him or her by registered mail, whereupon he or she shall be granted a hearing upon request for the purpose of showing his or her qualifications. If the applicant presents to the Commission no request for such hearing within twenty (20) days after receiving the notification above referred to, his or her application shall be acted upon without further notice. [Rule 29.]

§ 502.30 Suspension or disbarment.

The Commission may deny admission to, suspend, or disbar any person from practice before the Commission who it finds does not possess the requisite qualifications to represent others or is lacking in character, integrity, or proper professional conduct. Any person who has been admitted to practice before the Commission may be disbarred from such practice only after being afforded an opportunity to be heard. [Rule 30.]

§ 502.31 Statement of interest.

The Commission may call upon any practitioner for a full statement of the nature and extent of his or her interest in the subject matter presented by him or her before the Commission. [Rule 31.]

§ 502.32 Former employees.

Title V of the Ethics in Government Act proscribes certain activities by certain former federal employees (18 U.S.C. 207). In summary, as applied to former Commission employees, the restrictions and basic procedures are as follows:

(a) *Restrictions.* (1) No former Commission employee may represent in any formal or informal appearance or make any oral or written communication with intent to influence a U.S. Government agency in a particular matter involving a specific party or parties in which the employee participated personally and substantially while with the Commission.

(2) No former Commission employee may, within two years of terminating Commission employment, act as a representative in the manner described in paragraph (a) of this section, as to a particular matter which was actually pending under the employee's official responsibility within one year prior to termination of the employment.

(3) Former senior Commission employees (defined as Commissioners and members of the Senior Executive Service as designated by the Office of Government Ethics under 18 U.S.C. 207(d)(1)) may not, for two years after terminating Commission employment, assist in representing a person by personal presence at an appearance before the Government on a matter in which the former employee had participated personally and substantially while at the Commission.

(4) Former senior Commission employees, as defined in paragraph (c) of this section, are barred for one year from representing parties before the Commission or communicating with intent to influence the Commission, regardless of prior involvement in the particular proceeding.

(b) *Prior consent for appearance.* (1) Prior to making any appearance, representation or communication described in paragraph (a) of this section, and, in addition to other requirements of this subpart, every former employee must apply for and obtain prior written consent of the Commission for each proceeding or matter in which such appearance, representation, or communication is contemplated. Such consent will be given only if the Commission determines that the appearance, representation or communication is not prohibited by the Act, this section or other provisions of this chapter.

(2) To facilitate the Commission's determination that the intended activity is not prohibited, applications for written consent shall:

(i) Be directed to the Commission, state the former connection of the applicant with the Commission and date of termination of employment, and identify the matter in which the applicant desires to appear; and

(ii) Be accompanied by an affidavit to the effect that the matter for which consent is requested is not a matter in which the applicant participated personally and substantially while at the Commission and, as made applicable by paragraph (a) of this section, that the particular matter as to which consent is requested was not pending under the applicant's official responsibility within one year prior to termination of employment and that the matter was not one in which the former employee had participated personally and substantially while at the Commission. The statements contained in the affidavit shall not be sufficient if disproved by an examination of the files and records of the case.

(3) The applicant shall be promptly advised as to his or her privilege to appear, represent or communicate in the particular matter, and the application, affidavit and consent, or refusal to consent, shall be filed by the Commission in its records relative thereto.

(c) *Basic procedures for possible violations.* The following basic guidelines for administrative enforcement restrictions on post employment activities are designed to expedite consultation with the Director of the Office of Government Ethics as required pursuant to section 207(j) of Title 18, United States Code.

(1) *Delegation.* The Chairman may delegate his or her authority under this subpart.

(2) *Initiation of administrative disciplinary hearing.* (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice. The Commission shall coordinate any investigation or administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Commission that it does not intend to initiate criminal prosecution.

(ii) Whenever the Commission has determined after appropriate review

that there is reasonable cause to believe that a former Commission employee has violated any provision of paragraph (a) of this section or 18 U.S.C. 207 (a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in paragraph (c)(3) of this section.

(3) *Adequate notice.* (i) The Commission shall provide a former Commission employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

(ii) Notice to the former Commission employee must include:

(A) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Commission employee to prepare an adequate defense;

(B) Notification of the right to a hearing; and

(C) An explanation of the method by which a hearing may be requested.

(4) *Presiding official.* (i) The presiding official at a proceeding under this section shall be the Chairman or an individual to whom the Chairman has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(ii) The examiner must be a Commissioner (other than the Chairman), an administrative law judge, or an attorney employed by the Commission and shall be provided with appropriate administrative and secretarial support by the Commission.

(iii) The presiding official shall be impartial. No individual who has participated in any manner in the decision to initiate a proceeding may serve as an examiner in that proceeding.

(5) *Time, date and place.* (i) The hearing shall be conducted at a reasonable time, date and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Commission employee's need for:

(A) Adequate time to prepare a defense properly, and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel;

(ii) To introduce and examine witnesses and to submit physical evidence;

(iii) To confront and cross-examine adverse witnesses;

(iv) To receive a transcript or recording of the proceedings, on request.

(7) *Burden of proof.* In any hearing under this subpart, the Commission has the burden of proof and must establish substantial evidence of a violation.

(8) *Initial decision.* (i) The examiner shall make a determination on matters exclusively of record in a proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the Commission, either party may appeal the decision solely on the record to the Chairman. The Chairman shall base his or her decision solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the Chairman modifies or reverses the initial decision, he or she shall specify such findings of facts and conclusions of law as are different from those of the examiner.

(9) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section after a final administrative decision or who failed to request a hearing after receiving adequate notice by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed five (5) years, which may be accomplished by directing Commission employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section may seek judicial review of the administrative determination.

(11) *Consultation and review.* The procedures for administrative enforcement set forth in paragraphs (a), (b), and (c) of this section have been reviewed by the Director of the Office of Government Ethics.

(d) *Partners or associates.* (1) In any case in which a former member, officer, or employee of the Commission is prohibited under this section from practicing, appearing, or representing anyone before the Commission in a particular Commission matter, any partner or legal or business associate of such former member, officer, or employee shall be prohibited from (i) utilizing the services of the disqualified former member, officer, or employee in connection with the matter, (ii) discussing the matter in any manner with the disqualified former member, officer, or employee, and (iii) sharing directly or indirectly with the disqualified former member, officer, or employee in any fees or revenues received for services rendered in connection with such matter.

(2) The Commission may require any practitioner or applicant to become a practitioner to file an affidavit to the effect that the practitioner or applicant will not: (i) utilize the service of, (ii) discuss the particular matter with, or (iii) share directly or indirectly any fees or revenues received for services provided in the particular matter, with a partner, fellow employee, or legal or business associate who is a former member, officer or employee of the Commission and who is either permanently or temporarily precluded from practicing, appearing or representing anyone before the Commission in connection with the particular matter; and that the applicant's employment is not prohibited by any law of the United States or by the regulations of the Commission. [Rule 32.]

Exhibit No. 1 to Subpart B [§§ 502.23, 502.26, 502.27]

Notice of Appearance

Federal Maritime Commission

Notice of Appearance

Docket No. ———:

Please enter my appearance in this proceeding as counsel for:

☐ I request to be informed by telephone or telegram of service of the administrative law judge's initial or recommended decision and of the Commission's decision in this proceeding. In the event I am not available when you call, appropriate advice left with my office will suffice.

Washington area: I understand I will be informed by telephone.

Outside Washington area: I authorize

☐ collect telephone call

☐ collect telegram

☐ I do not desire the above notice.

[Name]

[Address]

[Telephone No.]

Note.—Must be signed by attorney at law admitted to practice before the Federal Courts or before the courts of any State or Territory of the United States or by a person not an attorney at law who has been admitted to practice before the Commission or by a person appearing on his or her own behalf or on behalf of any corporation, partnership, or association of which he or she is a partner, officer, or regular employee.

Subpart C—Parties

§ 502.41 Parties; how designated.

The term "party", whenever used in the rules in this part, shall include any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, or governmental agency. A party who seeks relief or other affirmative action under § 502.62 shall be designated as "complainant". A party against whom relief or other affirmative action is sought in any proceeding commenced under §§ 502.62, 502.66, or 502.67, or a party named in an order of investigation issued by the Commission, shall be designated as "respondent," except that in investigations instituted under section 15 of the Shipping Act, 1916 or section 11(c) of the Shipping Act of 1984, the parties to the agreement shall be designated as "proponents" and the parties protesting the agreement shall be designated as "protestants". A person who has been permitted to intervene under § 502.72 shall be designated as "intervenor". All persons or parties designated in this section shall become parties to the proceeding involved without further pleadings, and no person other than a party or its representative may introduce evidence or examine witnesses at hearings. [Rule 41.]

§ 502.42 Hearing Counsel.

The Director, Bureau of Hearing Counsel, shall be a party to all proceedings governed by the rules in this part, except that in complaint proceedings under § 502.62, the Director may become a party only upon leave to intervene granted pursuant to § 502.72, and in rulemaking proceedings, the Director may become a party by designation, if the Commission determines that the circumstances of the proceeding warrant such participation. The Director or the Director's representative shall be designated as "Hearing Counsel" and shall be served with copies of all papers, pleadings, and documents in every proceeding in which Hearing Counsel is a party. Hearing Counsel shall actively participate in any proceeding to which the Director is a party, to the extent required in the public interest, subject to the separation of functions required by section 5(c) of the Administrative Procedure Act. (See § 502.224.) [Rule 42.]

§ 502.43 Substitution of parties.

In appropriate circumstances, the Commission or presiding officer may order an appropriate substitution of parties. [Rule 43.]

§ 502.44 Necessary and proper parties in certain complaint proceedings.

(a) If a complaint relates to through transportation by continuous carriage or transshipment, all carriers participating in such through transportation shall be joined as respondents.

(b) If the complaint relates to more than one carrier or other person subject to the shipping acts, all carriers or other persons against whom a rule or order is sought shall be made respondents.

(c) If complaint is made with respect to an agreement filed under section 15 of the Shipping Act, 1916 or section 5(a) of the Shipping Act of 1984, the parties to the agreement shall be made respondents. [Rule 44.]

Subpart D—Rulemaking

§ 502.51 Petition for issuance, amendment, or repeal of rule.

Any interested party may file with the Commission a petition for the issuance, amendment, or repeal of a rule designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements of the Commission. The petition shall set forth the interest of petitioner and the nature of the relief desired, shall include any facts, views, arguments, and data deemed relevant by petitioner, and shall be verified. If such petition is for the amendment or repeal of a rule, it shall be accompanied by proof of service on all persons, if any, specifically named in such rule, and shall conform in other aspects to Subpart H of this part. Replies to such petition shall conform to the requirements of § 502.74. [Rule 51.]

§ 502.52 Notice of proposed rulemaking.

(a) General notice of proposed rulemaking, including the information specified in § 502.143, shall be published in the **Federal Register**, unless all persons subject thereto are named and, either are personally served, or otherwise have actual notice thereof in accordance with law.

(b) Except where notice of hearing is required by statute, this section shall not apply to interpretative rules, general statements of policy, organization rules, procedure, or practice of the Commission, or any situation in which the Commission for good cause finds (and incorporates such findings in such rule) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. [Rule 52.]

§ 502.53 Participation in rulemaking.

(a) Interested persons will be afforded an opportunity to participate in rulemaking through submission of written data, views, or arguments, with or without opportunity to present the same orally in any manner. No replies to the written submissions will be allowed unless, because of the nature of the proceeding, the Commission indicates that replies would be necessary or desirable for the formulation of a just and reasonable rule, except that, where the proposed rules are such as are required by statute to be made on the record after opportunity for a hearing, such hearing shall be conducted pursuant to 5 U.S.C. 556 and 557, and the procedure shall be the same as stated in Subpart J of this part.

(b) In those proceedings in which respondents are named, interested persons who wish to participate shall file a petition to intervene in accordance with the provisions of § 502.72 [Rule 53.]

§ 502.54 Contents of rules.

The Commission will incorporate in any rules adopted a concise general statement of their basis and purpose. [Rule 54.]

§ 502.55 Effective date of rules.

The publication or service of any substantive rule shall be made not less than thirty (30) days prior to its effective date except (a) as otherwise provided by the Commission for good cause found and published in the **Federal Register** or (b) in the case of rule granting or recognizing exemption or relieving restriction; interpretative rules; or statements of policy. [Rule 55.]

Subpart E—Proceedings; Pleadings; Motions; Replies

§ 502.61 Proceedings.

(a) Proceedings are commenced by the filing of a complaint, or by order of the Commission upon petition or upon its own motion, or by reference by the Commission to the formal docket of a petition for a declaratory order.

(b) In proceedings referred to the Office of Administrative Law Judges, the Commission shall specify a date on or before which hearing shall commence, which date shall be no more than six months from the date of publication in the **Federal Register** of the Commission's order instituting the proceedings or notice of complaint filed. Hearing dates may be deferred by the presiding judge only to prevent substantial delay,

expense, detriment to the public interest or undue prejudice to a party.

(c) In the order instituting a proceeding or in the notice of filing of complaint and assignment, the Commission shall establish dates by which the initial decision and the final Commission decision will be issued. These dates may be extended by order of the Commission for good cause shown. [Rule 61.]

§ 502.62 Complaints and fee.

(a) The complaint shall contain the name and address of each complainant, the name and address of each complainant's attorney or agent, the name and address of each person against whom complaint is made, a concise statement of the cause of action, and a request for the relief or other affirmative action sought.

(b) Where reparation is sought and the nature of the proceeding so requires, the complaint shall set forth: the ports of origin and destination of the shipments; consignees, or real parties in interest, where shipments are on "order" bill of lading; consignors; date of receipt by carrier or tender of delivery to carrier; names of vessels; bill of lading number (and other identifying reference); description of commodities; weights; measurement; rates; charges made or collected; when, where, by whom and to whom rates and charges were paid; by whom the rates and charges were borne; the amount of damage; and the relief sought. Except under unusual circumstances and for good cause shown, reparation will not be awarded upon a complaint in which it is not specifically asked for, nor upon a new complaint by or for the same complainant which is based upon a finding in the original proceeding. Wherever a rate, fare, charge, rule, regulation, classification, or practice is involved, appropriate reference to the tariff should be made, if possible.

(c) If the complaint fails to indicate the sections of the acts alleged to have been violated or clearly to state facts which support the allegations, the Commission may, on its own initiative, require the complaint to be amended to supply such further particulars as it deems neccesary.

(d) The complaint should designate the place at which hearing is desired.

(e) A form of complaint is set forth in Exhibit No. 1 to this subpart.

(f) The complaint shall be accompanied by remittance of a $50 filing fee.

(g) For special types of cases, see § 502.92 in Subpart F (Special Docket applications for refund or waiver); Subpart K (Shortened Procedure); and Subpart S (Small Claims). [Rule 62.]

§ 502.63 Reparation, statute of limitations.

(a) Complaints seeking reparation pursuant to section 22 of the Shipping Act, 1916 shall be filed within two (2) years after the cause of action accrues.

(b) Complaints seeking reparation pursuant to section 11 of the Shipping Act of 1984 shall be filed within three years after the cause of action accrues.

(c) The Commission will consider as in substantial compliance with a statute of limitations a complaint in which complainant alleges that the matters complained of, if continued in the future, will constitute violations of the shipping acts in the particulars and to the extent indicated and in which complainant prays for reparation accordingly for injuries which may be sustained as a result of such violations. (See §§ 502.251–502.253 and Exhibit No. 1 to Subpart O.)

(d) Notification to the Commission that a complaint may or will be filed for the recovery of reparation will not constitute a filing within the applicable statutory period.

(e) A complaint is deemed filed on the date it is received by the Commission. [Rule 63.]

§ 502.64 Answer to complaint.

(a) Respondent shall file with the Commission an answer to the complaint and shall serve it on complainant as provided in Subpart H of this part within twenty (20) days after the date of service of the complaint by the Commission or within thirty (30) days if such respondent resides in Alaska or beyond the Continental United States, unless such periods have been extended under § 502.71 or § 502.102, or reduced under § 502.103, or unless motion is filed to withdraw or dismiss the complaint, in which latter case, answer shall be made within ten (10) days after service of an order denying such motion. Such answer shall give notice of issues controverted in fact or law. Recitals of material and relevant facts in a complaint, amended complaint, or bill of particulars, unless specifically denied in the answer thereto, shall be deemed admitted as true, but if request is seasonably made, a competent witness shall be made available for cross-examination on such evidence.

(b) In the event that respondent should fail to file and serve the answer within the time provided, the presiding officer may enter such rule or order as may be just, or may in any case require such proof as he or she may deem proper, except that the presiding officer may permit the filing of a delayed answer after the time for filing the answer has expired, for good cause shown.

(c) A form of answer to complaint is set forth in Exhibit No. 2 to this subpart. [Rule 64.]

§ 502.65 Replies to answers not permitted.

Replies to answers will not be permitted. New matters set forth in respondent's answer will be deemed to be controverted. [Rule 65.]

§ 502.66 Order to show cause.

The Commission may institute a proceeding by order to show cause. The order shall be served upon all persons named therein, shall include the information specified in § 502.143, may require the person named therein to answer, and shall require such person to appear at a specified time and place and present evidence upon the matters specified. [Rule 66.]

§ 502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.

(a)(1)(i) The term "general rate increase" means any change in rates, fares, or charges which will (A) result in an increase in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in an increase in gross revenue of such carrier for the particular trade of not less than 3 per centum.

(ii) The term "general rate decrease" means any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in tariffs per trade of any common carrier by water in the intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade of not less than 3 per centum.

(2) No general rate increase or decrease shall take effect before the close of the sixtieth day after the day it is posted and filed with the Commission. A vessel operating common carrier (VOCC) shall file, under oath, concurrently with any general rate increase or decrease, testimony and exhibits of such composition, scope and format that they will serve as the VOCC's entire direct case in the event the matter is set for formal investigation, together with all underlying workpapers used in the preparation of the testimony and exhibits. The VOCC shall also certify that copies of testimony and exhibits and underlying workpapers have been filed simultaneously with the attorney general of every noncontiguous

State, Commonwealth, possession or Territory having ports in the relevant trade that are served by the VOCC. The contents of underlying workpapers served on attorneys general pursuant to this paragraph are to be considered confidential and are not to be disclosed to members of the public except to the extent specifically authorized by an order of the Commission or a presiding officer. A copy of the testimony and exhibits shall be made available at every port in the trade at the offices of the VOCC or its agent during usual business hours for inspection and copying by any person.

(3) Workpapers underlying financial and operating data filed in connection with proposed rate changes shall be made available promptly by the carrier to all persons requesting them for inspection and copying upon the submission of the following certification, under oath, to the carrier:

Certification

I, (Name and title if applicable) ———, of (Full name of company or entity), having been duly sworn, certify that the underlying workpapers requested from (Name of carrier), will be used solely in connection with protests related to and proceedings resulting from (Name of carrier) ———'s rate (increase) (decrease) scheduled to become effective (Date) ——— and that their contents will not be disclosed to any person who has not signed, under oath, a certification in the form prescribed, which has been filed with the Carrier, unless public disclosure is specifically authorized by an order of the Commission or the presiding officer.

Signature:. ———

Date:. ———

Signed and Sworn to before me this ——— day of ———, 19—.

Notary Public:. ———

My Commission expires:. ———

(4) Where a protest contains information obtained in confidence, it will be set out in a separate document, clearly marked on the cover page "Contains Confidential Information." Failure to observe this procedure will subject the protest to rejection.

(5) Failure by the VOCC to meet the service and filing requirements of paragraph (a)(2) of this section may result in rejection of the tariff matter. Such rejection will take place within three work days after the defect is discovered.

(b)(1) Any protest against a proposed general rate increase or decrease made pursuant to section 3 of the Intercoastal Shipping Act, 1933, may be made by letter and shall be filed with the Director, Bureau of Tariffs, and served upon the tariff publishing officer of the carrier pursuant to Subpart H of this part no later than thirty (30) days prior to the proposed changes, except that, if the due date for protests falls on a Saturday, Sunday or national legal holiday, such protest must be filed no later than the last business day preceding the weekend or holiday. Persons filing protests pursuant to this section shall be made parties to any docketed proceeding involving the matter protested, provided that the issues raised in the protest are pertinent to the issues set forth in the order of investigation. Protests shall include:

(i) Identification of the tariff in question;

(ii) Grounds for opposition to the change;

(iii) Identification of any specific areas of the VOCC's testimony, exhibits, or underlying data that are in dispute and a statement of position on each area in dispute (VOCC general rate increases or decreases only);

(iv) Specific reasons why a hearing is necessary to resolve the issues in dispute;

(v) Any requests for additional carrier data;

(vi) Identification of any witnesses that protestant would produce at a hearing, a summary of their testimony and identification of documents that protestant would offer in evidence; and

(vii) A subscription and verification.

(2) Protests against other proposed changes in tariffs made pursuant to section 3 of the Intercoastal Shipping Act, 1933, shall be filed and served no later than twenty (20) days prior to the proposed effective date of the change. The provision of paragraph (b)(1) of this section relating to the form, place and manner of filing protests against a proposed general rate increase or decrease shall be applicable to protests against other proposed tariff changes. A protest is deemed filed on the date it is received by the Secretary of the Commission.

(c) Replies to protests shall conform to the requirements of § 502.74 [Rule 74.]

(d)(1) In the event the general rate increase or decrease of a VOCC is made subject to a docketed proceeding, Hearing Counsel, the VOCC and all protestants shall serve, under oath, testimony and exhibits constituting their direct case, together with underlying workpapers on all parties pursuant to Subpart H of this part and lodge copies of testimony and exhibits with the presiding officer no later than seven (7) days after the tariff matter takes effect or, in the case of suspended matter, seven (7) days after the matter would have otherwise gone into effect.

(2) If other proposed tariff changes made pursuant to section 3 of the Intercoastal Shipping Act, 1933, are made subject to a docketed proceeding, the carrier, Hearing Counsel and all protestants will simultaneously serve pursuant to Subpart H of this part on all parties and lodge with the presiding officer prehearing statements as specified in paragraph (f)(1) of this section no later than seven (7) days after the tariff matter takes effect, or in the case of suspended matter, seven (7) days after the matter would have otherwise gone into effect.

(e)(1) Subsequent to the exchange of prehearing statements by all parties, the presiding officer shall, at his or her discretion, direct all parties to attend a prehearing conference to consider:

(i) Simplification of issues;

(ii) Identification of issues which can be resolved readily on the basis of documents, admissions of fact, or stipulations;

(iii) Identification of any issues which require evidentiary hearing;

(iv) Limitation of witnesses and areas of cross-examination, should an evidentiary hearing be necessary;

(v) Requests for subpoenas; and

(vi) Other matters which may aid in the disposition of the hearing, including but not limited to the exchange of written testimony and exhibits.

(2) After considering the procedural recommendations of the parties, the presiding officer shall limit the issues to the extent possible and establish a procedure for their resolution.

(3) The presiding officer shall, whenever feasible, rule orally upon the record on matters presented before him or her.

(f)(1) It shall be the duty of every party to file and serve a prehearing statement on a date specified by the presiding officer, but in any event no later than the date of the prehearing conference.

(2) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and briefly set forth:

(i) Identification of issues which can be resolved readily on the basis of documents, admissions of fact, or stipulations;

(ii) Identification of any issues which require evidentiary hearing, together with the reasons why these issues cannot be resolved readily on the basis of documents, admissions of facts, stipulations or an alternative procedure;

(iii) Requests for cross-examination of the direct written testimony of specified witnesses, the subjects of such cross-examination and the reasons why alternatives to cross-examination are not feasible;

(iv) Requests for additional, specified witnesses and documents, together with the reasons why the record would be deficient in the absence of this evidence; and

(v) Procedural suggestions that would aid in the timely disposition of the proceeding.

(g) The provisions of this section are designed to enable the presiding officer to complete a hearing within sixty (60) days after the proposed effective date of the tariff changes and submit an initial decision to the Commission within one hundred twenty (120) days pursuant to section 3(b) of the Intercoastal Shipping Act, 1933. The presiding officer may employ any other provision of the Commission's Rules of Practice and Procedure, not inconsistent with this section, in order to meet this objective. Exceptions to the decision of the presiding officer, filed pursuant to § 502.227 shall be served no later than fifteen (15) days after date of service of the initial decision. Replies thereto shall be served no later than ten (10) days after the date of service of exceptions. In the absence of exceptions, the decision of the presiding officer shall be final within 30 days from the date of service, unless within that period, a determination to review is made in accordance with the procedures outlined in § 502.227.

(h) Intervention by persons other than protestants ordinarily shall not be granted. In the event intervention of such persons is granted, the presiding officer of the Commission may attach such conditions or limitations as are deemed necessary to effectuate the purpose of this section. [Rule 67.]

§ 502.68 Declaratory orders and fee.

(a)(1) The Commission may, in its discretion, issue a declaratory order to terminate a controversy or to remove uncertainty.

(2) Petitions for the issuance thereof shall: state clearly and concisely the controversy or uncertainty; name the persons and cite the statutory authority involved; include a complete statement of the facts and grounds prompting the petition, together with full disclosure of petitioner's interest; be served upon all parties named therein; and conform to the requirements of Subpart H of this part.

(3) Petitions shall be accompanied by remittance of a $50 filing fee.

(b) Petitions under this section shall be limited to matters involving conduct or activity regulated by the Commission under statutes administered by the Commission. The procedures of this section shall be invoked solely for the purpose of obtaining declaratory rulings which will allow persons to act without peril upon their own view. Controversies involving an allegation of violation by another person of statutes administered by the Commission, for which coercive rulings such as payment of reparation or cease and desist orders are sought, are not proper subjects of petitions under this section. Such matters must be adjudicated either by filing of a complaint under section 22 or the Shipping Act, 1916 or section 11 of the Shipping Act of 1984 and § 502.62, or by filing of a petition for investigation under § 502.69.

(c) Petitions under this section shall be accompanied by the complete factual and legal presentation of petitioner as to the desired resolution of the controversy or uncertainty, or a detailed explanation why such can only be developed through discovery or evidentiary hearing.

(d) Replies to the petition shall contain the complete factual and legal presentation of the replying party as to the desired resolution, or a detailed explanation why such can only be developed through discovery or evidentiary hearing. Replies shall conform to the requirements of § 502.74 and shall be served pursuant to Subpart H of this part.

(e) No additional submissions will be permitted unless ordered or requested by the Commission or the presiding officer. If discovery or evidentiary hearing on the petition is deemed necessary by the parties, such must be requested in the petition or replies. Requests shall state in detail the facts to be developed, their relevance to the issues, and why discovery or hearing procedures are necessary to develop such facts.

(f)(1) A notice of filing of any petition which meets the requirements of this section shall be published in the **Federal Register**. The notice will indicate the time for filing of replies to the petition. If the controversy or uncertainty is one of general public interest, and not limited to specifically named persons, opportunity for reply will be given to all interested persons including the Commission's Bureau of Hearing Counsel.

(2) In the case of petitions involving a matter limited to specifically named persons, participation by persons not named therein will be permitted only upon grant of intervention by the Commission pursuant to § 502.72.

(3) Petitions for leave to intervene shall be submitted on or before the reply date and shall be accompanied by intervenor's complete reply including its factual and legal presentation in the matter.

(g) Petitions for declaratory order which conform to the requirements of this section will be referred to a formal docket. Referral to a formal docket is not to be construed as the exercise by the Commission of its discretion to issue an order on the merits of the petition. [Rule 68.]

§ 502.69 Petitions—general and fee.

(a) Except when submitted in connection with a formal proceeding, all claims for relief or other affirmative action by the Commission, except as otherwise provided herein, shall be by written petition, which shall state clearly and concisely the petitioner's grounds of interests in the subject matter, the facts relied upon and the relief sought, shall cite by appropriate reference the statutory provisions or other authority relied upon for relief, shall be served upon all parties named therein, and shall conform otherwise to the requirements of Subpart H of this part. Replies thereto shall conform to the requirements of § 502.74.

(b) Petitions shall be accompanied by remittance of a $50 filing fee. [Rule 69.]

§ 502.70 Amendments or supplements to pleadings.

(a) Amendments or supplements to any pleadings will be permitted or rejected, either in the discretion of the Commission if the case has not been assigned to a presiding officer for hearing, or otherwise, in the discretion of the officer designated to conduct the hearing, except that after a case is assigned for hearing, no amendment shall be allowed which would broaden the issues, without opportunity to reply to such amended pleading and to prepare for the broadened issues. The presiding officer may direct a party to state its case more fully and in more detail by way of amendment.

(b) A response to an amended pleading must be filed and served in conformity with the requirements of Subpart H of this part and § 502.74, unless the Commission or the presiding officer directs otherwise. Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleading.

(c) Whenever by the rules in this part a pleading is required to be verified, the amendment or supplement shall also be verified. [Rule 70.]

§ 502.71 Bill of particulars.

Within fifteen (15) days after date of service of the complaint, respondent may file with the Commission and serve upon complainant pursuant to Subpart H of this part a motion for a bill of

particulars. Within ten (10) days after date of service of such motion, complainant shall file with the Commission and serve upon respondent either (a) the bill of particulars or (b) a reply to such motion, made in conformity with the requirements of § 502.74 setting forth the particular matters contained in the motion which are objected to and the reasons for the objections. If the motion is granted in whole or in part, the order granting same shall specify the date by which the particulars must be furnished. A motion may be filed relative to incomplete compliance with such order. In the event of inexcusable default in furnishing particulars, the party in default shall be precluded from making proof upon the issues with respect to which it has defaulted in furnishing particulars. The time for filing an answer to the complaint shall be extended to a date ten (10) days after the date of service of the bill of particulars or of notice of disallowance of the motion therefor. For good cause shown, motion for a bill of particulars also may be filed after answer is made and within a reasonable time prior to hearing. [Rule 71.]

§ 502.72 Petition for leave to intervene.

(a) A petition for leave to intervene may be filed in any proceeding and shall be served on existing parties by the petitioner pursuant to Subpart H of this part. An additional fifteen (15) copies of the petition shall be filed with the Secretary for the use of the Commission. Upon request, the Commission will furnish a service list to any member of the public pursuant to Part 503 of this chapter. The petition shall set forth the grounds for the proposed intervention and the interest and position of the petitioner in the proceeding and shall comply with the other applicable provisions of Subpart H of this part, and if affirmative relief is sought, the basis for such relief. Such petition shall also indicate the nature and extent of the participation sought, e.g., the use of discovery, presentation of evidence and examination of witnesses.

(b)(1) Petitions for leave to intervene as a matter of right will only be granted upon a clear and convincing showing that:

(i) The petitioner has a substantial interest relating to the matter which is the subject of the proceeding warranting intervention; and

(ii) The proceeding may, as a practical matter, materially affect the petitioner's interest; and

(iii) The interest is not adequately represented by existing parties to the proceeding.

(2) Petitions for intervention as a matter of Commission discretion may be granted only upon a showing that:

(i) A common issue of law or fact exists between the petitioner's interests and the subject matter of the proceeding; and

(ii) Petitioner's intervention will not unduly delay or broaden the scope of the proceeding, prejudice the adjudication of the rights of or be duplicative of positions of any existing party; and

(iii) The petitioner's participation may reasonably be expected to assist in the development of a sound record.

(3) The timeliness of the petition will also be considered in determining whether a petition will be granted under paragraphs (b)(1) or (b)(2) of this section. If filed after hearings have been closed, a petition will not ordinarily be granted.

(c) In the interests of: (1) Restricting irrelevant, duplicative, or repetitive discovery, evidence or arguments; (2) having common interests represented by a spokesperson; and (3) retaining authority to determine priorities and control the course of the proceeding, the presiding officer, in his or her discretion, may impose reasonable limitations on an intervenor's participation, e.g., the filing of amicus briefs, presentation of evidence on selected factual issues, or oral argument on some or all of the issues.

(d) Absent good cause shown, any intervenor desiring to utilize the procedures provided by Subpart L must commence doing so no later than fifteen (15) days after its petition for leave to intervene has been granted. If the petition is filed later than thirty (30) days after the date of publication in the **Federal Register** of the Commission's Order instituting the proceeding or notice of complaint filed, petitioner will be deemed to have waived its right to utilize such procedures, unless good cause is shown for the failure to file the petition within the 30-day period. The use of Subpart L procedures by an intervenor whose petition was filed beyond such 30-day period will in no event be allowed, if, in the opinion of the presiding officer, such use will result in delaying the proceeding unduly.

(e) If intervention is granted before or at a prehearing conference convened for the purpose of considering matters relating to discovery, the intervenor's discovery matters may also be considered at that time, and may be limited under the provisions of paragraph (c) of this section.

(f) A form of petition for leave to intervene is set forth in Exhibit No. 3 to this subpart. [Rule 72.]

§502.73 Motions.

(a) In any docketed proceeding, an application or request for an order or ruling not otherwise specifically provided for in this part shall be by motion. After the assignment of a presiding officer to a proceeding and before the issuance of his or her recommended or initial decision, all motions shall be addressed to and ruled upon by the presiding officer unless the subject matter of the motion is beyond his or her authority, in which event the matter shall be referred to the Commission. If the proceeding is not before the presiding officer, motions shall be designated as "petitions" and shall be addressed to and passed upon by the Commission.

(b) Motions shall be in writing, except that a motion made at a hearing shall be sufficient if stated orally upon the record, unless the presiding officer directs that it be reduced to writing.

(c) All written motions shall state clearly and concisely the purpose of and the relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested; and shall conform with the requirements of Subpart H of this part.

(d) Oral argument upon a written motion may be permitted at the discretion of the presiding officer or the Commission, as the case may be.

(e) A repetitious motion will not be entertained. [Rule 73.]

§ 502.74 Replies to pleadings, motions, applications, etc.

(a)(1) A reply to a reply is not permitted.

(2) Except as otherwise provided respecting answers (§ 502.64), shortened procedure (Subpart K of this part), briefs (§ 502.221), exceptions (§ 502.227), and the documents specified in paragraph (b) of this section, any party may file and serve a reply to any written motion, pleading, petition, application, etc., permitted under this part within fifteen (15) days after date of service thereof, unless a shorter period is fixed under § 502.103.

(b) When time permits, replies also may be filed to protests seeking suspension of tariffs (§ 502.67), applications for enlargement of time and postponement of hearing (Subpart G of this part), and motions to take depositions (§ 502.201).

(c) Replies shall be in writing, shall be verified if verification of original pleading is required, shall be so drawn as to fully and completely advise the parties and the Commission as to the nature of the defense, shall admit or

deny specifically and in detail each material allegation of the pleading answered, shall state clearly and concisely the facts and matters of law relied upon, and shall conform to the requirements of Subpart H of this part. [Rule 74.]

§ 502.75 Proceedings involving assessment agreements.

(a) In complaint proceedings involving assessment agreements filed under the fifth paragraph of Section 15 of the Shipping Act, 1916, or section 5(d) of the Shipping Act of 1984, the Notice of Filing of Complaint and Assignment will specify a date before which the initial decision will be issued, which date will be not more than eight months from the date the complaint was filed.

(b) Any party to a proceeding conducted under this section who desires to utilize the prehearing discovery procedures provided by Subpart L of this part shall commence doing so at the time it files its initial pleading, i.e., complaint, answer or petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to § 502.113. Answers or objections to discovery requests shall be subject to the normal provisions set forth in Subpart L.

(c) Exceptions to the decision of the presiding officer, filed pursuant to § 502.227, shall be filed and served no later than fifteen (15) days after date of service of the initial decision. Replies thereto shall be filed and served no later than fifteen (15) days after date of service of exceptions. In the absence of exceptions, the decision of the presiding officer shall be final within thirty (30) days from the date of service, unless within that period, a determination to review is made in accordance with the procedures outlined in § 502.227. [Rule 75.]

Exhibit No. 1 to Subpart E [§ 502.62]—Complaint Form and Information Checklist

Before the Federal Maritime Commission

Complaint

———— v. ———— [Insert without abbreviation exact and complete name of party or parties respondent]

I. The complainant is [State in this paragraph whether complainant is an association, a corporation, firm, or partnership and the names of the individuals composing the same. State also the nature and principal place of business].

II. The respondent is [State in this paragraph whether respondent is an association, a corporation, firm, or partnership and the names of the individuals composing the same. State also the nature and principal place of business].

III. Allegation of jurisdiction. [State in this paragraph a synopsis of the statutory bases for claim(s)].

IV. That [State in this or subsequent paragraphs to be lettered "A", "B", etc., the matter or matters complained of. If rates are involved, name each rate, fare, charge, classification, regulation, or practice, the lawfulness of which is challenged].

V. That by reason of the facts stated in the foregoing paragraphs, complainant has been (and is being) subject to injury as a direct result of the violations by respondent of sections ——— [State in this paragraph the causal connection between the alleged illegal acts of respondent and the claimed injury to complainant, with all necessary statutory sections relied upon].

VI. That complainant has been injured in the following manner: To its damage in the sum of $———.

VII. Wherefore complainant prays that respondent be required to answer the charges herein; that after due hearing, an order be made commanding said respondent (and each of them): to cease and desist from the aforesaid violations of said act(s); to establish and put in force such practices as the Commission determines to be lawful and reasonable; to pay to said complainant by way of reparations for the unlawful conduct hereinabove described the sum of $———, with interest and attorney's fees or such other sum as the Commission may determine to be proper as an award of reparation; and that such other and further order or orders be made as the Commission determines to be proper in the premises.

Dated at ———, this —— day of ———, 19—.

———————————

[Complainant's signature]

———————————

[Office and post office address]

———————————

[Signature or agent or attorney of complainant]

———————————

[Post office address]

Verification [See § 502.112]

State of ———, County of ———, ss: ———, ——— being first duly sworn on oath deposes and says that he (she) is

———————————

[The complainant, or, if a firm, association, or corporation, state the capacity of the affiant]

and is the person who signed the foregoing complaint; that he (she) has read the complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of ———, County of ——— this ——— day ———, A.D. 19—.

[Seal]

———————————

[Notary Public]

My Commission expires—. ————————

Information To Assist in Filing Formal Complaint

General

Formal Docket Complaint procedures usually involve an evidentiary hearing on disputed facts. Where no evidentiary hearing on disputed facts is necessary and where all parties agree to the use of different procedures, a complaint may be processed under Subpart K [Shortened Procedure] or Subpart S [Informal Docket for a claim of $10,000 or less]. An application for refund or waiver of collection of freight charges due to tariff error should be filed pursuant to § 502.92 and Exhibit No. 1 to Subpart F. Consider also the feasibilty of filing a Petition for Declaratory Order under § 502.68.

Under the Shipping Act of 1984 [foreign commerce], the complaint must be filed within three (3) years from the time the cause of action accrues and may be brought only against a "person subject to the Act", e.g., a common carrier, terminal operator or freight forwarder.

Because of the limitation periods, a complaint is deemed to be filed only when it is physically received at the Commission. [See § 502.114]

The format of Exhibit No. 1 to Subpart E must be followed and a *verification must be included* where the complainant is not represented by an attorney or other person qualified to practice before the Commission. [See §§ 502.21–502.32 and 502.112] The complaint must also fully describe the alleged violations of the specific section(s) of the shipping statute(s) involved and how complainant is or was directly injured as a result. An original and fifteen copies, plus a further number of copies sufficient for service upon each named respondent must be filed and the Commission will serve the other parties. [*See* §§ 502.113 and 502.118]

In addition to Subpart E, some other important rules are: § 502.2 (mailing address; hours); § 502.7 (documents in foreign language); § 502.23 (Notice of Apperance); § 502.41 (parties; how designated); § 502.44 (necessary and proper parties to certain complaint proceedings); and Subpart H (form, execution and service of documents).

Checklist of Specific Information

The following checklist sets forth items of information which are pertinent in cases submitted to the Commission pursuant to the regulatory provisions of the shipping statutes. The list is not intended to be inclusive, nor does it indicate all of the essential allegations which may be material in specific cases.

1. Identity of complainant; if an individual, complainant's residence; if a partnership, name of partners, business and principal place thereof; if a corporation, name, state of incorporation, and principal place of business. The same information with respect to respondents, intervenors, or others who become parties is necessary.

2. Description of commodity involved, with port of origin, destination port, weight, consignor and consignee of shipment(s), date shipped from loading port, and date received at discharge port.

3. Rate charged, with tariff authority for same, and any rule or regulation applicable

thereto; the charges collected and from whom.

4. Route of shipment, including any transshipment; bill of lading reference.

5. Date of delivery or tender of delivery of each shipment.

6. Where the rate is challenged and comparisons are made with rates on other commodities, the form, packing, density, susceptibility to damage, tendency to contaminate other freight, value, volume of movement, competitive situation, and all matters relating of the cost of loading, unloading, and otherwise handling of respective commodities.

7. If comparisons are made between the challenged rates and rates on other routes, the allegation showing similarity of service should include at least respective distances, volumes of movement, cost of handling, and competitive conditions.

8. History of rate with reasons for previous increases or decreases of same.

9. When the complaint alleges undue prejudice or preference, the complaint should indicate what manner of undue prejudice or preference is involved, and whether to a particular person, locality, or description of traffic; how the preference or discrimination resulted and the manner in which the respondents are responsible for the same; and how complainant is damaged by the prejudice or preference, in loss of sales or otherwise.

10. Care should be exercised to differentiate between the measure of damages required in cases where prejudice or preference is charged, where the illegality of rates is charged and other situations.

11. Where a filed agreement or conduct under the agreement is challenged, all necessary provisions of the shipping statute involved must be specifically cited, showing in detail how a section was violated and how the conduct or agreement injures complainant. The complaint should be thorough and clear as to all relief complainant is requesting.

Exhibit No. 2 to Subpart E [§ 502.64]—Answer to Complaint

Before the Federal Maritime Commission

Answer

———— v. ————

[Complainant] [Respondent]

Docket No. ————

The above-named respondent, for answer to the complaint in this proceeding, states:

I. [State in this and subsequent paragraphs to be numbered II, III, etc., appropriate and responsive admissions, denials, and averments, specifically answering the complaint, paragraph by paragraph.]

Wherefore respondent prays that the complaint in this proceeding be dismissed.

[Name of respondent]

By ————

[Title of Officer]

[Office and post office address]

[Signature of attorney or agent]

[Post office address]

Date ————, 19—.

Verification

[See form for verification of complaint in Exhibit No. 1 to this Subpart and § 502.112.]

Certificate of Service

[See § 502.114.]

Exhibit No. 3 to Subpart E [§ 502.72]—Petition for Leave to Intervene

Before the Federal Maritime Commission

Petition for Leave To Intervene

———— v. ———— Docket No. ————.

Your petitioner, ————, respectfully represents that he (she) has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is [State whether an association, corporation, firm, or partnership, etc., as in Exhibit No. 1 to this subpart, and nature and principal place of business].

II. [Here set out specifically position and interest of petitioner in the above-entitled proceeding and other essential averments in accordance with Rule 72 (46 CFR 502.72).]

Wherefore said ———— requests leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

[If affirmative relief is sought, insert appropriate request here.]

Dated at ————, this ———— day of ————, 19—

[Petitioner's signature]

[Office and post office address]

[Signature of agent or attorney of petitioner]

[Post office address]

Verification and Certificate of Service

[See Exhibits Nos. 1 and 2 to this Subpart.]

Subpart F—Settlement; Prehearing Procedure

§ 502.91 Opportunity for informal settlement.

(a) Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, argument, offers of settlement, or proposal of adjustment, without prejudice to the rights of the parties.

(b) No stipulation, offer, or proposal shall be admissible in evidence over the objection of any party in any hearing on the matter. [Rule 91].

§ 502.92 Special docket applications and fee.

(a)(1) A common carrier by water in foreign commerce which publishes its own tariff or, if the common carrier does not publish its own tariff, the carrier and the conference to which it belongs, or a shipper, may file an application for permission to refund or waive collection of a portion of freight charges where it appears that there is (i) an error in a tariff of a clerical or administrative nature or (ii) an error due to inadvertence in failing to file a new tariff. Such refund or waiver must not result in discrimination among shippers.

(2) The Commission must have received an effective tariff setting forth the rate on which refund or waiver would be based prior to the filing of the application.

(3)(i) The application for refund or waiver must be filed with the Commission within one hundred eighty (180) days from the date of shipment and served upon other persons involved pursuant to Subpart H of this part. An application is filed when it is placed in the mail, delivered to a courier, or, if delivered by another method, when it is received by the Commission. Filings by mail or courier must include a certification as to date of mailing or delivery to the courier.

(ii) The application for refund or waiver must be accompanied by remittance of a $25 filing fee.

(iii) Date of shipment shall mean the date of sailing of the vessel from the port at which the cargo was loaded.

(4) By filing, the applicant(s) agrees that:

(i) If permission is granted by the Commission:

(A) An appropriate notice will be published in the tariff; or

(B) Other steps will be taken as the Commission may require which give notice of the rate on which such refund or waiver would be based; and

(C) Additional refunds or waivers shall be made with respect to other shipments in the manner prescribed by the Commission's order approving the application.

(ii) If the application is denied, other steps will be taken as the Commission may require.

(5)(a) Application for refund or waiver shall be made in accordance with Exhibit 1 to this subpart. Any application which does not furnish the information required by the prescribed form or otherwise comply with this rule may be returned to the applicant by the Secretary without prejudice to resubmission within the 180-day limitation period.

(b) Common carriers by water in interstate or intercoastal commerce, or conferences of such carriers, may file application for permission to refund a portion of freight charges collected from a shipper or waive collection of a portion of freight charges from a shipper. All such applications shall be filed within the 2-year statutory period referred to in § 502.63, and shall be made in accordance with Exhibit No. 1 to this subpart. Such applications will be considered the equivalent of a complaint and answer thereto admitting the facts complained of. If allowed, an order for payment or waiver will be issued by the Commission.

(c) Applications under paragraphs (a) and (b) of this section shall be submitted in an original and three (3) copies to the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Each application shall be acknowledged with a reference to the assigned docket number and referred to the Office of Administrative Law Judges. The presiding officer may, in his or her discretion, require the submission of additional information or oral testimony. Formal proceedings as described in other rules of this part need not be conducted. The presiding officer shall issue an initial decision to which the provisions of § 502.227 shall be applicable. [Rule 92.]

§ 502.93 Satisfaction of complaint.

If a respondent satisfies a complaint either before its answer thereto is due or after answering, a statement to that effect, setting forth when and how the complaint has been satisfied and signed and verified by the opposing parties shall be filed with the Commission and served upon all parties of record. Such a statement, which may be by letter, shall show the amount of reparation agreed upon; shall contain the data called for by Appendix A to this part (#4), insofar as said form is applicable; and shall state that a like adjustment has been or will be made by respondent with other persons similarly situated. Satisfied complaints will be dismissed in the discretion of the Commission. [Rule 93.]

§ 502.94 Prehearing conference.

(a)(1) Prior to any hearing, the Commission or presiding officer may direct all interested parties, by written notice, to attend one or more prehearing conferences for the purpose of considering any settlement under § 502.91, formulating the issues in the proceeding and determining other matters to aid in its disposition. In addition to any offers of settlement or proposals of adjustment, there may be considered the following:

(i) Simplification of the issues;

(ii) The necessity or desirability of amendments to the pleadings;

(iii) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(iv) Limitation on the number of witnesses;

(v) The procedure at the hearing;

(vi) The distribution to the parties prior to the hearing of written testimony and exhibits;

(vii) Consolidation of the examination of witnesses by counsel;

(viii) Such other matters as may aid in the disposition of the proceeding.

(2) The presiding officer may require, prior to the hearing, exchange of exhibits and any other material which may expedite the hearing. He or she shall assume the responsibility of accomplishing the purposes of the notice of prehearing conference so far as this may be possible without prejudice to the rights of any party.

(3) The presiding officer shall rule upon all matters presented for decision, orally upon the record when feasible, or by subsequent ruling in writing. If a party determines that a ruling made orally does not cover fully the issue presented, or is unclear, such party may petition for a further ruling thereon within ten (10) days after receipt of the transcript.

(b) In any proceeding under the rules in this part, the presiding officer may call the parties together for an informal conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purposes of this section. [Rule 94.]

§ 502.95 Prehearing statements.

(a) Unless waiver is granted by the presiding officer, it shall be the duty of all parties to a proceeding to prepare a statement or statements at a time and in the manner to be established by the presiding officer provided that there has been reasonable opportunity for discovery. To the extent possible, joint statements should be prepared.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and briefly set forth the following matters, unless otherwise ordered by the presiding officer:

(1) Issues involved in the proceeding.

(2) Facts stipulated pursuant to the procedures together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible.

(3) Facts in dispute.

(4) Witnesses and exhibits by which disputed facts will be litigated.

(5) A brief statement of applicable law.

(6) The conclusion to be drawn.

(7) Suggested time and location of hearing and estimated time required for presentation of the party's or parties' case.

(8) Any appropriate comments, suggestions or information which might assist the parties in preparing for the hearing or otherwise aid in the disposition of the proceeding.

(c) The presiding officer may, for good cause shown, permit a party to introduce facts or argue points of law outside the scope of the facts and law outlined in the prehearing statement. Failure to file a prehearing statement, unless waiver has been granted by the presiding officer, may result in dismissal of a party from the proceeding, dismissal of a complaint, judgment against respondents, or imposition of such other sanctions as may be appropriate under the circumstances.

(d) Following the submission of prehearing statements, the presiding officer may, upon motion or otherwise, convene a prehearing conference for the purpose of further narrowing issues and limiting the scope of the hearing if, in his or her opinion, the prehearing statements indicate lack of dispute of material fact not previously acknowledged by the parties or lack of legitimate need for cross-examination and is authorized to issue appropriate orders consistent with the purposes stated in this section. [Rule 95.]

Exhibit No. 1 to Subpart F [§ 502.92]—Application for Refund of or Waiver for Freight Charges Due to Tariff Error

Federal Maritime Commission Special Docket No. ———

Amount of Freight Charges involved in request ———

Application of [Name of carrier, conference or (if under the 1984 Act) shipper] for the benefit of [Name of person who paid or is responsible for payment of freight charges].

1. *Shipment(s).* Here fully describe:

(a) Commodity [According to tariff description].

(b) Number of shipments.

(c) Weight or measurement of individual shipment, as well as, all shipments.

(d) Date(s) of shipment(s), i.e., sailing(s) [furnish supporting evidence] and Date(s) of Delivery.

(e) Shipper and Place of Origin.

(f) Consignee, Place of Destination and Routing of Shipment(s).

(g) Name of Carrier and Date shown on Bill of Lading [furnish legible copies of bill(s) of lading].

(h) Names of Participating Ocean Carrier(s).

(i) Name(s) of Vessel(s) involved in carriage.

(j) Amount of Freight Charges actually collected [furnish legible copies of rated bill(s) of lading or freight bill(s), as appropriate] broken down (i) per shipment, (ii) in the aggregate, (iii) by whom paid, (iv) who is responsible for payment if different, and (v) date(s) of collection.

(k) Rate applicable at time of shipment [furnish legible copies of tariff page(s)].

(l) Rate sought to be applied [furnish legible copies of tariff page(s)].

(m) Amount of freight charges at rate sought to be applied, per shipment and in the aggregate.

(n) Amount of freight charges sought to be (refunded) (waived), per shipment and in the aggregate.

2. Furnish docket numbers of other special docket applications or decided or pending formal proceedings involving the same rate situations.

3. Furnish any information or evidence as to whether grant of the application will result in discrimination among ports or carriers.

4. State whether there are shipments of other shippers of the same or similar commodity which (i) moved via the carrier(s) or conference involved in this application during the period of time beginning on the day the bill(s) of lading was issued and ending on the day before the effective date of the conforming tariff, and (ii) moved on the same voyage(s) of the vessel(s) carrying the shipment(s) described in Number 1, above.

5. Fully explain the basis for the application, i.e., the clerical or administrative error or error due to inadvertence, or reasons why freight charges collected are thought to be unlawful (domestic commerce) showing why the application should be granted. Furnish affidavits, if appropriate, and legible copies of all supporting documents. If the error is due to inadvertence, specify the date when the carrier and/or conference intended or agreed to file a new tariff.

[Here set forth Name of Applicant, Signature of Authorized Person, Typed or Printed Name of Person, Title of Person and Date]

State of ———, County of ———, ss:

I, ———, on oath declare that I am ——— of the above-named applicant, that I have read this application and know its contents, and that they are true.

Subscribed and sworn to before me, a notary public in and for the State of ———, County of ———, this —— day of ———, A.D. 19—.

(Seal)

———

Notary Public

My Commission expires ———. ———

Affidavit of Carrier(s) and/or Conference

[Here, as applicable, set forth same type of affidavit(s) and notarization(s) as set forth on page 2 of this exhibit for carrier, for any other water carrier participating in the transportation under a joint through rate and/or for a conference, if a conference rate is involved.]

Certificate of Mailing

I certify that the date shown below is the date of mailing [or date of delivery to courier] of the original and three (3) copies of this application to the Secretary, Federal Maritime Commission, Washington, D.C., 20573.

Dated at ———, this —— day of ———, 19—.

[Signature] ———. ———

For ———. ———

Subpart G—Time

§ 502.101 Computation.

In computing any period of time under the rules in this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or national legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or national legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, or national legal holidays shall be excluded from the computation. [Rule 101.]

§ 502.102 Enlargement of time to file documents.

Motions for enlargement of time for the filing of any pleading or other document, or in connection with the procedures of Subpart L of this part, shall set forth the reasons for the motion. Such motions will be granted only under exceptional circumstances duly demonstrated in the request. Such motions shall conform to the requirements of Subpart H of this part, except as to service if they show that the parties have received actual notice of the motion; and in relation to briefs, exceptions, and replies to exceptions, such motions shall conform to the further provisions of §§ 502.222 and 502.227. Upon motion made after the expiration of the specified period, the filing may be permitted where reasonable grounds are found for the failure to file. Replies to such motions shall conform to the requirements of § 502.74. [Rule 102.]

§ 502.103 Reduction of time to file documents.

Except as otherwise provided by law and for good cause, the Commission, with respect to matters pending before it, and the presiding officer, with respect to matters pending before him or her, may reduce any time limit prescribed in the rules in this part. [Rule 103.]

§ 502.104 Postponement of hearing.

Motions for postponement of any hearing date shall set forth the reasons for the motion, and shall conform to the requirements of Subpart H of this part, except as to service if they show that parties have received such actual notice of motion. Such motions will be granted only if found necessary to prevent substantial delay, expense, detriment to the public interest or undue prejudice to a party. Replies to such motions shall conform to the requirements of § 502.74. [Rule 104.]

§ 502.105 Waiver of rules governing enlargements of time and postponements of hearings.

The Commission, the presiding officer, or the Chief Administrative Law Judge may waive the requirements of §§ 502.102 and 502.104, as to replies to pleadings, etc., to motions for enlargement of time or motions to postpone a hearing, and may rule ex parte on such requests. Requests for enlargement of time or motions to postpone or cancel a prehearing conference or hearing must be received, whether orally or in writing, at least five (5) days before the scheduled date. Except for good cause shown, failure to meet this requirement may result in summary rejection of the request. [Rule 105.]

Subpart H—Form, Execution, and Service of Documents

§ 502.111 Form and appearance of documents filed with Commission.

All papers to be filed under the rules in this part may be reproduced by printing or by any other process, provided the copies are clear and legible, shall be dated, the original signed in ink, show the docket description and title of the proceeding, and show the title, if any, and address of the signer. If typewritten, the impression shall be on only one side of the paper and shall be double spaced except that quotations shall be single spaced and indented. Documents not printed, except correspondence and exhibits, should be on strong, durable paper and shall be not more than 8½ inches wide and 12 inches long, with a left hand margin 1½ inches wide. Printed documents shall be printed in clear type (never smaller than small pica or 11-point type) adequately leaded, and the paper shall be opaque and unglazed. [Rule 111.]

§ 502.112 Subscription and verification of documents.

(a) If a party is represented by an attorney or other person qualified to practice before the Commission under the rules in this part, each pleading, document or other paper of such party filed with the Commission shall be signed by at least one person of record

admitted to practice before the Commission in his or her individual name, whose address shall be stated. Except when otherwise specifically provided by rule or statute, such pleading, document or paper need not be verified or accompanied by affidavit. The signature of a person admitted or qualified to practice before the Commission constitutes a certificate by him or her that he or she has read the pleading, document or paper; that he or she is authorized to file it; that to the best of his or her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. For a willful violation of this section, a person admitted or qualified to practice before the Commission may be subjected to appropriate disciplinary action.

(b) If a party is not represented by a person admitted or qualified to practice before the Commission, each pleading, document or other paper of such party filed with the Commission shall be signed and verified under oath by the party or by a duly authorized officer or agent of the party, whose address and title shall be stated. The form of verification shall be substantially as set forth in Appendix No. 1 to Subpart E. Where the signature is that of an officer or agent (unless, in the case of a corporate party, it is signed by the president or a vice president and attested by the secretary or an assistant secretary under the seal of the corporation), there shall be filed with the Commission an original or certified copy of the power of attorney or other document authorizing the person to sign. [Rule 112.]

§ 502.113 Service by the Commission.

Complaints filed pursuant to § 502.62, amendments to complaints, and complainant's memoranda filed in shortened procedure cases will be served by the Commission. In addition to and accompanying the original of every document filed with the Commission for service by the Commission, there shall be a sufficient number of copies for use of the Commission (see § 502.118) and for service on each party to the proceeding. [Rule 113.]

§ 502.114 Service and filing by parties.

(a) Except as otherwise specifically provided by the rules in this part, all pleadings, documents, and papers of every kind (except requests for subpenas) in proceedings before the Commission under the rules in this part (other than documents served by the Commission under § 502.113 and documents submitted at a hearing or prehearing conference) shall, when tendered to the Commission or the presiding officer for filing, show that service has been made upon all parties to the proceeding and upon any other persons required by the rules in this part to be served. Such service shall be made by delivering one copy to each party: by hand delivering in person; by mail, properly addressed with postage prepaid; or by courier.

(b) Except with respect to filing of complaints pursuant to §§ 502.62 and 502.63, protests pursuant to § 502.67 and claims pursuant to § 502.302, the date of filing shall be either the date on which the pleading, document, or paper is physically lodged with the Commission by a party or the date which a party certifies it to have been deposited in the mail or delivered to a courier. [Rule 114.]

§ 502.115 Service on attorney or other representative.

When a party has appeared by attorney or other representative, service upon each attorney or other representative of record will be deemed service upon the party, except that, if two or more attorneys of record are partners or associates of the same firm, only one of them need be served. [Rule 115.]

§ 502.116 Date of service.

The date of service of documents served by the Commission shall be the date shown in the service stamp thereon. The date of service of documents served by parties shall be the day when matter served is deposited in the United States mail, delivered to a courier, or is delivered in person, as the case may be. In computing the time from such dates, the provisions of § 502.101 shall apply. [Rule 116.]

§ 502.117 Certificate of service.

The original of every document filed with the Commission and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

Certificate of Service

I hereby certify that I have this day served the foregoing document upon [all parties of record or name of person(s)] by [mailing, delivering to courier or delivering in person] a copy to each such person.

Dated at, ——— this ——— day of ——— 19—.

(Signature) _____

(For) _____

[Rule 117.]

§ 502.118 Copies of documents for use of the Commission.

(a) Except as otherwise provided in the rules in this part, the original and fifteen (15) copies of every document filed and served in proceedings before the Commission shall be furnished for the Commission's use. If a certificate of service accompanied the original document, a copy of such certificate shall be attached to each such copy of the document.

(b) In matters pending before an administrative law judge the following copy requirements apply.

(1) An original and fifteen copies shall be filed with the Secretary of:

(i) Appeals and replies thereto filed pursuant to § 502.153;

(ii) Memoranda submitted under shortened procedures of Subpart K of this part;

(iii) Briefs submitted pursuant to § 502.221;

(iv) All motions, replies and other filings for which a request is made of the administrative law judge for certification to the Commission or on which it otherwise appears it will be necessary for the Commission to rule.

(2) An original and four copies shall be filed with the Secretary of prehearing statements required by § 502.95, stipulations under § 502.162, and all other motions, petitions, or other written communications seeking a ruling from the presiding administrative law judge.

(3)(i) A single copy shall be filed with the Secretary of requests for discovery, answers, or objections exchanged among the parties under procedures of subpart L of this part. Such materials will not be part of the record for decision unless admitted by the presiding officer or Commission.

(ii) Motions filed pursuant to § 502.201 are governed by the requirements of paragraph (b)(2) of this section and motions involving persons and documents located in a foreign country are governed by the requirements of paragraph (b)(1)(iv) of this section.

(4) One copy of each exhibit shall be furnished to the official reporter, to each of the parties present at the hearing and to the Presiding Officer unless he or she directs otherwise. If submitted other than at a hearing, the "reporter's" copy of an exhibit shall be furnished to the administrative law judge for later inclusion in the record if and when admitted.

(5) Copies of prepared testimony submitted pursuant to §§ 502.67(d) and 502.157 are governed by the requirements for exhibits in paragraph (b)(4) of this section. [Rule 118.]

Subpart I—Subpenas

§ 502.131 Requests; issuance.

Subpenas for the attendance of witnesses or the production of evidence shall be issued upon request of any party, without notice to any other party. Requests for subpenas for the attendance of witnesses may be made orally or in writing; requests for subpenas for the production of evidence shall be in writing. The party requesting the subpena shall tender to the presiding officer an original and at least two copies of such subpena. Where it appears to the presiding officer that the subpena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may in his or her discretion, as a condition precedent to the issuance of the subpena, require the person seeking the subpena to show the general relevance and reasonable scope of the testimony or other evidence sought. [Rule 131.]

§ 502.132 Motions to quash or modify.

(a) Except when issued at a hearing, or in connection with the taking of a deposition, within ten (10) days after service of a subpena for attendance of a witness or a subpena for production of evidence, but in any event at or before the time specified in the subpena for compliance therewith, the person to whom the subpena is directed may, by motion with notice to the party requesting the subpena, petition the presiding officer to quash or modify the subpena.

(b) If served at the hearing, the person to whom the subpena is directed may, by oral application at the hearing, within a reasonable time fixed by the presiding officer, petition the presiding officer to revoke or modify the subpena.

(c) If served in connection with the taking of a deposition pursuant to § 502.203 unless otherwise agreed to by all parties or otherwise ordered by the presiding officer, the party who has requested the subpena shall arrange that it be served at least twenty (20) days prior to the date specified in the subpena for compliance therewith, the person to whom the subpena is directed may move to quash or modify the subpena within ten (10) days after service of the subpena, and a reply to such motion shall be served within five (5) days thereafter. [Rule 132.]

§ 502.133 Attendance and mileage fees.

Witnesses summoned by subpena to a hearing are entitled to the same fees and mileage that are paid to witnesses in courts of the United States. Fees and mileage shall be paid, upon request, by the party at whose instance the witness appears. [Rule 133.]

§ 502.134 Service of subpenas.

If service of a subpena is made by a United States marshal, or his or her deputy, or an employee of the Commission, such service shall be evidenced by his or her return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpena. In case of failure to make service, the reasons for the failure shall be stated on the original subpena. In making service, the original subpena shall be exhibited to the person served, shall be read to him or her if he or she is unable to read, and a copy thereof shall be left with him or her. The original subpena, bearing or accompanied by required return, affidavit, or statement, shall be returned without delay to the Commission, or if so directed on the subpena, to the presiding officer before whom the person named in the subpena is required to appear. [Rule 134.]

§ 502.135 Subpena of Commission staff personnel, documents or things.

(a) A subpena for the attendance of Commission staff personnel or for the production of documentary materials in the possession of the Commission shall be served upon the Secretary. If the subpena is returnable at hearing, a motion to quash may be filed within five (5) days of service and attendance shall not be required until the presiding officer rules on said motion. If the subpena is served in connection with prehearing depositions, the procedure to be followed with respect to motions to quash and replies thereto will correspond to the procedures established with respect to motions and replies in § 502.132(c).

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel subpenaed under this section. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under § 502.135(a) shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unless the Commission, on its own motion, reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 135.]

§ 502.136 Enforcement.

In the event of failure to comply with any subpena or order issued in connection therewith, the Commission may seek enforcement as provided in § 502.210(b). [Rule 136.]

Subpart J—Hearings; Presiding Officers, Evidence

§ 502.141 Hearings not required by statute.

The Commission may call informal public hearings, not required by statute, to be conducted under the rules in this part where applicable, for the purpose of rulemaking or to obtain information necessary or helpful in the determination of its policies or the carrying out of its duties, and may require the attendance of witnesses and the production of evidence to the extent permitted by law. [Rule 141.]

§ 502.142 Hearings required by statute.

In complaint and answer cases, investigations on the Commission's own motion, and in other rulemaking and adjudication proceedings in which a hearing is required by statute, formal hearings shall be conducted pursuant to 5 U.S.C. 554. [Rule 142.]

§ 502.143 Notice of nature of hearing, jurisdiction and issues.

Persons entitled to notice of hearings, except those notified by complaint served under § 502.133, will be duly and timely informed of (a) the nature of the proceeding, (b) the legal authority and jurisdiction under which the proceeding is conducted, and (c) the terms, substance, and issued involved, or the matters of fact and law asserted, as the case may be. Such notice shall be published in the Federal Register unless all persons subject thereto are named and either are personally served or otherwise have actual notice thereof in accordance with law. [Rule 143.]

§ 502.144 Notice of time and place of hearing.

Notice of hearing will designate the time and place thereof, the person or persons who will preside, and the kind of decision to be issued. The date or place of a hearing for which notice has been issued may be changed when warranted. Reasonable notice will be given to the parties or their representatives of the time and place of the change thereof, due regard being had for the public interest and the convenience and necessity of the parties

or their representatives. Notice may be served by mail or telegraph. [Rule 144.]

§ 502.145 Presiding officer.

(a) *Definition.* "Presiding officer" includes, where applicable, a member of the Commission or an administrative law judge. (See § 502.25.)

(b) *Designation of administrative law judge.* An administrative law judge will be designated by the Chief of the Commission's Office of Administrative Law Judges to preside at hearings required by statute, in rotation so far as practicable, unless the Commission or one or more members thereof shall preside, and will also preside at hearings not required by statute when designated to do so by the Commission.

(c) *Unavailability.* If the presiding officer assigned to a proceeding becomes unavailable to the Commission, the Commission, or Chief Judge (if such presiding officer was an administrative law judge), shall designate a qualified officer to take his or her place. Any motion predicated upon the substitution of a new presiding officer for one originally designated shall be made within ten (10) days after notice of such substitution. [Rule 145.]

§ 502.146 Commencement of functions of Office of Administrative Law Judges.

In proceedings handled by the Office of Administrative Law Judges, its functions shall attach:

(a) Upon the service by the Commission of a complaint filed pursuant to § 502.62; or

(b) Upon reference by the Commission of a petition for a declaratory order pursuant to § 502.68; or

(c) Upon forwarding for assignment by the Office of the Secretary of a special docket application pursuant to § 502.92; or

(d) Upon the initiation of a proceeding and ordering of hearing before an administrative law judge. [Rule 146.]

§ 502.147 Functions and powers.

(a) *Of presiding officer.* The officer designated to hear a case shall have authority to arrange and give notice of hearing; sign and issue subpenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to pleadings; delineate the scope of a proceeding instituted by order of the Commission by amending, modifying, clarifying or interpreting said order, except with regard to that portion of any order involving the Commission's suspension authority set forth in Section 3, Intercoastal Shipping Act, 1933; hold conferences for the settlement or simplification of issues by consent of the parties; regulate the course of the hearing; prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and rule upon motions, administer oaths and affirmations; examine witnesses; direct witnesses to testify or produce evidence available to them which will aid in the determination of any question of fact in issue; rule upon offers of proof and receive relevant material, reliable and probative evidence; act upon petitions to intervene; permit submission of facts, arguments, offers of settlement, and proposals of adjustment; hear oral argument at the close of testimony; fix the time for filing briefs, motions, and other documents to be filed in connection with hearings and the administrative law judge's decision thereon, except as otherwise provided by the rules in this part, act upon petitions for enlargement of time to file such documents, including answers to formal complaints; and dispose of any other matter that normally and properly arises in the course of proceedings. The presiding office or the Commission may exclude any person from a hearing for disrespectful, disorderly, or contumacious language or conduct.

(b) All of the functions delegated in Subparts A to Q of this part, inclusive, to the Chief Judge, presiding officer, or administrative law judge include the functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter, pursuant to the provisions of section 105 of Reorganization Plan No. 7 of 1961. [Rule 147.]

§ 502.148 Consolidation of proceedings.

The Commission or the Chief Judge (or designee) may order two or more proceedings which involve substantially the same issues consolidated and heard together. [Rule 148.]

§ 502.149 Disqualification of presiding or participating officer.

Any presiding or participating officer may at any time withdraw if he or she deems himself or herself disqualified, in which case there will be designated another presiding officer. If a party to a proceeding, or its representative, files a timely and sufficient affidavit of personal bias or disqualification of a presiding or participating officer, the Commission will determine the matter as a part of the record and decision in the case. [Rule 149.]

§ 502.150 Further evidence required by presiding officer during hearing.

At any time during the hearing, the presiding officer may call for further evidence upon any issue, and require such evidence where available to be presented by the party or parties concerned, either at the hearing or adjournment thereof. [Rule 150.]

§ 502.151 Exceptions to rulings of presiding officer unnecessary.

Formal exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is made or sought, makes known the action which it desires the presiding officer to take or its objection to an action taken, and its grounds therefor. [Rule 151.]

§ 502.152 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof. [Rule 152.]

§ 502.153 Appeal from ruling of presiding officer other than orders of dismissal in whole or in part.

(a) Rulings of the presiding officer may not be appealed prior to or during the course of the hearing, or subsequent thereto, if the proceeding is still before him or her, except where the presiding officer shall find it necessary to allow an appeal to the Commission to prevent substantial delay, expense, or detriment to the public interest, or undue prejudice to a party.

(b) Any party seeking to appeal must file a motion for leave to appeal no later than fifteen (15) days after written service or oral notice of the ruling in question, unless the presiding officer, for good cause shown, enlarges or shortens the time. Any such motion shall contain not only the grounds for leave to appeal but the appeal itself.

(c) Replies to the motion for leave to appeal and the appeal may be filed within fifteen (15) days after date of service thereof, unless the presiding officer, for good cause shown, enlarges or shortens the time. If the motion is granted, the presiding officer shall certify the appeal to the Commission.

(d) Unless otherwise provided, the certification of the appeal shall not

operate as a stay of the proceeding before the presiding officer.

(e) The provisions of § 502.10 shall not apply to this section. [Rule 153.]

§ 502.154 Rights of parties as to presentation of evidence.

Every party shall have the right to present its case or defense by oral or 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. The presiding officer shall, however, have the right and duty to limit the introduction of evidence and the examination and cross-examination of witnesses when in his or her judgment, such evidence or examination is cumulative or is productive of undue delay in the conduct of the hearing. [Rule 154.]

§ 502.155 Burden of proof.

At any hearing in a suspension proceeding under section 3 of the Intercoastal Shipping Act, 1933 (§ 502.67), the burden of proof to show that the suspended rate, fare, charge, classification, regulation, or practice is just and reasonable shall be upon the respondent carrier or carriers. In all other cases, the burden shall be on the proponent of the rule or order. [Rule 155.]

§ 502.156 Evidence admissible.

In any proceeding under the rules in this part, all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative, shall be admissible. All other evidence shall be excluded. Unless inconsistent with the requirements of the Administrative Procedure Act and these Rules, the Federal Rules of Evidence, Pub. L. 93–595, effective July 1, 1975, will also be applicable. [Rule 156.]

§ 502.157 Written evidence.

(a) The use of written statements in lieu of oral testimony shall be restored to where the presiding officer in his or her discretion rules that such procedure is appropriate. The statements shall be numbered in paragraphs, and each party in its rebuttal shall be required to list the paragraphs to which it objects, giving an indication of its reasons for objecting. Statistical exhibits shall contain a short commentary explaining the conclusions which the offeror draws from the data. Any portion of such testimony which is argumentative shall be excluded. Where written statements are used, copies of the statement and any rebuttal statement shall be furnished to all parties, as shall copies of exhibits. The presiding officer shall fix respective dates for the exchange of such written rebuttal statements and exhibits in advance of the hearing to enable study by the parties of such testimony. Thereafter, the parties shall endeavor to stipulate as many of the facts set forth in the written testimony as they may be able to agree upon. Oral examination of witnesses shall thereafter be confined to facts which remain in controversy, and a reading of the written statements at the hearing will be dispensed with unless the presiding officer otherwise directs.

(b) Where a formal hearing is held in a rulemaking proceeding, interested persons will be afforded an opportunity to participate through submission of relevant, material, reliable and probative written evidence properly verified, except that such evidence submitted by persons not present at the hearing will not be made a part of the record if objected to by any party on the ground that the person who submits the evidence is not present for cross-examination. [Rule 157.]

§ 502.158 Documents containing matter not material.

Where written matter offered in evidence is embraced in a document containing other matter which is not intended to be offered in evidence, the offering party shall present the original document to all parties at the hearing for their inspection, and shall offer a true copy of the matter which is to be introduced, unless the presiding officer determines that the matter is short enough to be read into the record. Opposing parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of the original document which are material and relevant. [Rule 158.]

§ 502.159 [Reserved]

§ 502.160 Records in other proceedings.

When any portion of the record before the Commission in any proceeding other than the one being heard is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference. [Rule 160.]

§ 502.161 Commission's files.

Where any matter contained in a tariff, report, or other document on file with the Commission is offered in evidence, such document need not be produced or marked for identification, but the matter so offered shall be specified in its particularity, giving tariff number and page number of tariff, report, or document in such manner as to be readily identified, and may be received in evidence by reference, subject to comparison with the original document on file. [Rule 161.]

§ 502.162 Stipulations.

The parties may, by stipulation, agree upon any facts involved in the proceeding and include them in the record with the consent of the presiding officer. It is desirable that facts be thus agreed upon whenever practicable. Writen stipulations shall be subscribed and shall be served upon all parties of record unless presented at the hearing or prehearing conference. A stipulation may be proposed even if not subscribed by all parties without prejudice to any nonsubscribing party's right to cross-examine and offer rebuttal evidence. [Rule 162.]

§ 502.163 Receipt of documents after hearing.

Documents or other writings to be submitted for the record after the close of the hearing will not be received in evidence except upon permission of the presiding officer. Such documents or other writings when submitted shall be accompanied by a statement that copies have been served upon all parties, and shall be received, except for good cause shown, not later than ten (10) days after the close of the hearing and not less than (10) days prior to the date set for filing briefs. Exhibit numbers will not be assigned until such documents are actually received and incorporated in the record. [Rule 163.]

§ 502.164 Oral argument at hearings.

Oral argument at the close of testimony may be ordered by the presiding officer in his or her discretion. [Rule 164.]

§ 502.165 Official transcript.

(a) The Commission will designate the official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and any briefs or memoranda of law filed therewith, shall be filed with the Commission. Transcripts of testimony will be available in any proceeding under the rules in this part, and will be supplied by the official reporter to the parties and to the public, except when required for good cause to be held confidential, at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter.

(b)(1) Section 11 of the Federal Advisory Committee Act provides that, except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and

advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings. As used in this section, "agency proceeding" means any proceeding as defined in 5 U.S.C. 551(12).

(2) The Office of Management and Budget has interpreted this provision as being applicable to proceedings before the Commission and its administrative law judges. (Guidelines, 38 FR 12851, May 16, 1973.)

(3) The Commission interprets section 11 and the OMB guidelines as follows:

(i) Future contracts between the Commission and the successfully bidding recording firm will provide that any party to a Commission proceeding or other interested person (hereinafter included within the meaning of "party") shall be able to obtain a copy of the transcript of the proceeding in which it is involved at the actual cost of duplication of the original transcript, which includes a reasonable amount for overhead and profit, except where it requests delivery of copies in a shorter period of time than is required for delivery by the Commission.

(ii) The Commission will bear the full expense of transcribing all of its administrative proceedings where it requests regular delivery service (as set forth in the Contract). In cases where the Commission requests daily delivery of transcript copies (as set forth in the Contract), any party may receive daily delivery service at the actual cost of duplication.

(iii)(A) Where the Commission does not request daily copy service, any party requesting such service must bear the incremental cost of transcription above the regular copy transcription cost borne by the Commission, in addition to the actual cost of duplication, except that where the party applies for and properly shows that the furnishing of daily copy is indispensible to the protection of a vital right or interest in achieving a fair hearing, the presiding officer in the proceeding in which the application is made shall order that daily copy service be provided the applying party at the actual cost of duplication, with the full cost of transcription being borne by the Commission.

(B) In the event a request for daily copy is denied by the presiding officer, the requesting party, in order to obtain daily copy, must pay the cost of transcription over and above that borne by the Commission, i.e., the incremental cost between that paid by the Commission when it requests regular copy and when it requests daily copy.

(C) The decision of the presiding officer in this situation is interpreted as falling within the scope of the functions and powers of the presiding officer, as defined in § 502.147(a). [Rule 165.]

§ 502.166 Corrections of transcript.

Motions made at the hearing to correct the record will be acted upon by the presiding officer. Motions made after the hearing to correct the record shall be filed with the presiding officer within twenty-five (25) days after the last day of hearing or any session thereof, unless otherwise directed by the presiding officer, and shall be served on all parties. Such motions may be in the form of a letter. If no objections are received within ten (10) days after date of service, the transcript will, upon approval of the presiding officer, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration of the stenographic record of the hearing. [Rule 166.]

§ 502.167 Objection to public disclosure of information.

Upon objection to public disclosure of any information sought to be elicited during a hearing, the presiding officer may in his or her discretion order that the witness shall disclose such information only in the presence of those designated and sworn to secrecy by the presiding officer. The transcript of testimony shall be held confidential. Within five (5) days after such testimony is given, the objecting party shall file with the presiding officer a verified written motion to withhold such information from public disclosure, setting forth sufficient identification of same and the basis upon which public disclosure should not be made. Copies of said transcript and motion need be served only upon the parties to whose representatives the information has been disclosed and upon such other parties as the presiding officer may designate. This rule is subject to the proviso that any information given pursuant thereto, may be used by the presiding officer or the Commission if they deem it necessary to a correct decision in the proceeding. [Rule 167.]

§ 502.168 Copies of data or evidence.

Every person compelled to submit data or evidence shall be entitled to retain or, on payment of proper costs, procure a copy of transcript thereof. [Rule 168.]

§ 502.169 Record of decision.

The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision. [Rule 169.]

Subpart K—Shortened Procedure

§ 502.181 Selection of cases for shortened procedure; consent required.

By consent of the parties and with approval of the Commission or presiding officer, a complaint proceeding may be conducted under shortened procedure without oral hearing, except that a hearing may be ordered by the presiding officer at the request of any party or in his or her discretion. [Rule 181.]

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

A complaint filed with the Commission under this subpart shall have attached a memorandum of the facts, subscribed and verified according to § 502.112, and of arguments separately stated, upon which it relies. The original of each complaint with memorandum shall be accompanied by copies for the Commission's use. The complaint shall be accompanied by remittance of a $50 filing fee. [Rule 182.]

§ 502.183 Respondent's answering memorandum.

Within twenty-five (25) days after date of service of the complaint, unless a shorter period is fixed, each respondent shall, if it consents to the shortened procedure provided in this subpart, serve upon complainant pursuant to subpart H of this part an answering memorandum of the facts, subscribed and verified according to § 502.112, and of arguments, separately stated, upon which it relies. The original of the answering memorandum shall be accompanied by a certificate of service as provided in § 502.114 and shall be accompanied by copies for the Commission's use. If the respondent does not consent to the proceeding being conducted under the shortened procedure provided in this subpart, the matter will be governed by Subpart E of this part and the respondent shall file an answer under § 502.64. [Rule 183.]

§ 502.184 Complainant's memorandum in reply.

Within fifteen (15) days after the date of service of the answering memorandum prescribed in § 502.183, unless a shorter period is fixed, each complainant may file a memorandum in reply, subscribed and verified according to § 502.112, served as provided in § 502.114, and accompanied by copies for the Commission's use. This will close the record for decision unless the presiding officer determines that the record is insufficient and orders the

submission of additional evidentiary materials. [Rule 184.]

§ 502.185 Service of memoranda upon and by interveners.

Service of all memoranda shall be made upon any interveners. Interveners shall file and serve memoranda in conformity with the provisions relating to the parties on whose behalf they intervene. [Rule 185.]

§ 502.186 Contents of memoranda.

The memorandum should contain concise arguments and fact, the same as would be offered if a formal hearing were held and briefs filed. If reparation is sought, paid freight bills should accompany complainant's original memorandum. [Rule 186.]

§ 502.187 Procedure after filing of memoranda.

An initial, recommended, or tentative decision will be served upon the parties in the same manner as is provided under § 502.225. Thereafter, the procedure will be the same as that in respect to proceedings after formal hearing. [Rule 187.]

Subpart L—Depositions, Written Interrogatories, and Discovery

§ 502.201 General provisions governing discovery.

(a) *Applicability.* The procedures described in this subpart are available in all adjudicatory proceedings under section 22 of the Shipping Act, 1916 and the Shipping Act of 1984. Unless otherwise ordered by the presiding officer, the copy requirements of § 502.118(b)(3)(i) shall be observed.

(b) *Schedule of use.—(1) Complaint proceedings.* Any party desiring to use the procedures provided in this subpart shall commence doing so at the time it files its initial pleading, e.g., complaint, answer or petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to § 502.113.

(2) *Commission instituted proceedings.* All parties desiring to use the procedures provided in this subpart shall commence to do so within 30 days of the service of the Commission's order initiating the proceeding.

(3) *Commencement of discovery.* The requirement to commence discovery under paragraphs (b)(1) and (b)(2) of this section shall be deemed satisfied when a party serves any discovery request under this Subpart upon a party or person from whom a response is deemed necessary by the party commencing discovery. A schedule for further discovery pursuant to this Subpart shall be established at the conference of the parties pursuant to paragraph (d) of this section.

(c) *Completion of discovery.* Discovery shall be completed within 120 days of the service of the complaint or the Commission's order initiating the proceeding.

(d) *Duty of the Parties.* In all proceedings in which the procedures of this subpart are used, it shall be the duty of the parties to meet or confer within fifteen (15) days after service of the answer to a complaint or after service of the discovery requests in a Commission-instituted proceeding in order to: establish a schedule for the completion of discovery within the 120-day period prescribed in paragraph (c) of this section; resolve to the fullest extent possible disputes relating to discovery matters; and expedite, limit, or eliminate discovery by use of admissions, stipulations and other techniques. The schedule shall be submitted to the presiding officer not later than five (5) days after the conference. Nothing in this rule should be construed to preclude the parties from meeting or conferring at an earlier date.

(e) *Submission of status reports and requests to alter schedule.* The parties shall submit a status report concerning their progress under the discovery schedule established pursuant to paragraph (d) of this section not later than thirty (30) days after submission of such schedule to the presiding officer and at 30-day intervals thereafter, concluding on the final day of the discovery schedule, unless the presiding officer otherwise directs. Requests to alter such schedule beyond the 120-day period shall set forth clearly and in detail the reasons why the schedule cannot be met. Such requests may be submitted with the status reports unless an event occurs which makes adherence to the schedule appear to be impossible, in which case the requests shall be submitted promptly after occurrence of such event.

(f) *Conferences.* The presiding officer may at any time order the parties or their attorneys to participate in a conference at which the presiding officer may direct the proper use of the procedures of this subpart or make such orders as may be necessary to resolve disputes with respect to discovery and to prevent delay or undue inconvenience. When a reporter is not present and oral rulings are made at a conference held pursuant to this paragraph or paragraph (g) of this section, the parties shall submit to the presiding officer as soon as possible but within three (3) work days, unless the presiding officer grants additional time, a joint memorandum setting forth their mutual understanding as to each ruling on which they agree and, as to each ruling on which their understandings differ, the individual understandings of each party. Thereafter, the presiding officer shall issue a written order setting forth such rulings.

(g) *Resolution of disputes.* After making every reasonable effort to resolve discovery disputes, a party may request a conference or rulings from the presiding officer on such disputes. Such rulings shall be made orally upon the record when feasible and/or by subsequent ruling in writing. If necessary to prevent undue delay or otherwise facilitate conclusion of the proceeding, the presiding officer may order a hearing to commence before the completion of discovery.

(h) *Scope of examination.* Persons and parties may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(i) *Protective Orders.*

(1) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding office may make any order which justice requires to protect a party or person from annoyance, embarrasment, oppression, or undue burden or expense including one or more of the following: (i) That the discovery not be had; (ii) that the discovery may be had only on specified terms and conditions including a designation of the time or place; (iii) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (iv) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (v) that discovery may be conducted with no one present except persons designated by the presiding officer; (vi) that a deposition after being sealed be opended only by order of the presiding officer; (vii) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (viii) that the parties

simultaneously file specified documents or information enclosed in sealed enveloped to be opened as directed by the presiding officer.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Rulings under this paragraph shall be issued by the presiding officer at a discovery conference called under § 502.201(f) or, if circumstances warrant, under such other procedure the presiding officer may establish.

(j) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the party's responses to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement responses with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which such person is expected to testify, and the substance of the testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (i) the party knows that the response was incorrect when made, or (ii) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the presiding officer or by agreement of the parties, subject to the time limitations set forth in paragraph (c) of this section or established under paragraph (e) of this section. [Rule 201.]

§ 502.202 Persons before whom depositions may be taken.

(a) *Within the United States.* Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths under the laws of the United States or of the place where the examination is held.

(b) *In foreign countries.* In a foreign country, depositions may be taken (1) on notice, before a person authorized to administer oaths in the place in which the examination is held, either under the law thereof or under the law of the United States, or (2) before a person commissioned by the Commission, and a person so commissioned shall have the power by virtue of his or her commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under the rules in this subpart. (See 22 CFR 92.49–92.66.)

(c) *Disqualification for interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(d) *Waiver of objection.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence

(e) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions. [Rule 202.]

§ 502.203 Depositions upon oral examination.

(a) *Notice of examination.* (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to such person and to every other party to the action, pursuant to subpart H of this part. The notice shall state the time and place for the taking of the deposition sufficient to identify the person or the particular class or group to which the person belongs. The notice shall also contain a statement of the matters concerning which each witness will testify.

(2) The attendance of witnesses may be compelled by subpena as provided in Subpart I of this part. If a subpena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpena shall be attached to or included in the notice.

(3) All errors and irregularities in the notice or subpena for taking of a deposition are waived unless written objection is promptly served upon the party giving the notice.

(4) Examination and cross-examination of deponents may proceed as permitted at the hearing under the provisions of § 502.154.

(b) *Record of examination; oath; objections.* (1) The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the direction and in his or her presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Objections shall be resolved at a discovery conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish.

(2) In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(3) The parties may stipulate or the presiding officer may upon motion order that a deposition be taken by telephone or other reliable device.

(c) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in paragraph (b) of this section. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the presiding officer. Upon demand of the objection party of deponent, the taking of the deposition shall be suspended for

the time necessary to make a motion for an order. Rulings under this paragraph shall be issued by the presiding officer at a discovery conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish.

(d) *Submission to witness; changes; signing.* When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given therefor, and the deposition may then be used as fully as though signed, unless upon objection, the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(e) *Certification and filing by officer; copies, notice of filing.* (1) The officer taking the deposition shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Secretary of the Commission by hand or registered or certified mail.

(2) Interested parties shall make their own arrangements with the officer taking the deposition for copies of the testimony and the exhibits.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(f) *Effect of errors and irregularities.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under this section and § 502.204 are waived unless a motion to suppress the deposition or some part thereof is made within ten (10) days of filing. [Rule 203.]

§ 502.204 Depositions upon written interrogatories.

(a) *Serving interrogatories; notice.* A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party pursuant to subpart H of this part with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter, a party so served may serve cross interrogatorie upon the party proposing to take the deposition. All errors and irregularities in the notice are waived unless written objection is promptly served upon the party giving the notice.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by paragraphs (b), (d) and (e) of § 502.203 to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him or her.

(c) *Notice of filing.* When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties. [Rule 204.]

§ 502.205 Interrogatories to parties.

(a) *Service; answers.* (1) Any party may serve, pursuant to Subpart H of this part, upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Any party desiring to serve interrogatories as provided by this section must comply with the applicable provisions of § 502.201 and make service thereof on all parties to the proceeding.

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, on all parties to the proceeding under the schedule established pursuant to § 502.201. The presiding officer, for good cause, may limit service of answers.

(b) *Objections to interrogatories.* All objections to interrogatories shall be resolved at the conference or meeting provided for under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Written replies to objections to interrogatories shall be permitted only to the extent that the discovery schedule previously established under § 502.201(d) is not delayed.

(c) *Scope, time, number and use.* (1) Interrogatories may relate to any matters which can be inquired into under § 502.210(h), and the answers may be used to the same extent as provided in § 502.209 for the use of the deposition of a party.

(2) Interrogatories may be sought after interrogatories have been answered, but the presiding officer, on motion of the deponent or the party interrogated, may make such protective order as justice may require.

(3) The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression.

(4) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the presiding officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. [Rule 205.]

§ 502.206 Production of documents and things and entry upon land for inspection and other purposes.

(a) *Scope.* Any party may serve, pursuant to Subpart H of this part, on any other party a request (1) to produce

and permit the party making the request, or someone acting on its behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, sound or video recordings, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of § 502.203(a) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property of any designated object or operation thereon, within the scope of § 502.203(a).

(b) *Procedure.* The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Responses shall be served under the schedule established pursuant to § 502.201. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. Objections to requests for production of documents shall be resolved at the conference or meeting required under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Written replies to objections to requests for production of documents shall be permitted only to the extent that the discovery schedule previously established under § 502.201(d) is not delayed. [Rule 206.]

§ 502.207 Requests for admission.

(a)(1) A party may serve, pursuant to Subpart H of this part, upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of § 502.203(a) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Any party desiring to serve a request as provided by this section must comply with the applicable provisions of § 502.201.

(2)(i) Each matter of which an admission is requested shall be separately set forth.

(ii) The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the presiding officer may allow pursuant to § 502.201, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.

(iii) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; a party may, subject to the provisions of § 502.207(c) deny the matter or set forth reasons why it cannot be admitted or denied.

(3) The party who has requested admissions may request rulings on the sufficiency of the answers or objections. Rulings on such requests shall be issued at a conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Unless the presiding officer determines that an objection is justified, the presiding officer shall order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this rule, the presiding officer may order either that the matter is admitted or that an amended answer be served. The presiding officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless the presiding officer on motion permits withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the presiding officer that withdrawal or amendment will be prejudicial in maintaining the party's action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission for any other purpose, nor may it be used against the party in any other proceeding.

(c) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under paragraph (a) of this section, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, that party may apply to the presiding officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. Such application must be made to the presiding officer before issuance of the initial decision in the proceeding. The presiding officer shall make the order unless it is found that (1) the request was held objectionable pursuant to paragraph (a) of this section, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that it might prevail on the matter, or (4) there was other good reason for the failure to admit. [Rule 207.]

§ 502.208 Use of discovery procedures directed to Commission staff personnel.

(a) Discovery procedures described in §§ 502.202, 502.203, 502.204, 502.205, 502.206, and 502.207, directed to Commission staff personnel shall be permitted and shall be governed by the procedures set forth in those sections except as modified by paragraphs (b) and (c) of this section. All notices to take depositions, written interrogatories, requests for production of documents and other things, requests for admissions, and any motions in connection with the foregoing, shall be served on the Secretary of the Commission.

(b) The General counsel shall designate an attorney to represent any Commission staff personnel to whom any discovery requests or motions are directed. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under paragraph (a) of this

section shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unless the Commission on its own motion reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No motion for leave to appeal is necessary in such instances and no ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 208.]

§ 502.209 Use of depositions at hearings.

(a) *General.* At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof in accordance with any one of the following provisions:

(1) Any depostion may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds: (i) That the witness is dead; or (ii) that the witness is out of the United States unless it appears that the absence of the witness was procured by the party offering the depositions; or (iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may require introduction of all of it which is relevant to the part introduced, and any party may introduce any other parts.

(5) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the same subject matter is afterward brought between the same parties or there representatives or successors in interest, all depositions lawfully taken and duly filed in the former proceeding may be used in the latter as if originally taken therefor.

(b) *Objections to admissibility.* (1) Except as otherwise provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(2) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at the time.

(3) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct or parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(4) Objections to the form of written interrogatories submitted under § 502.204 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross interrogatories.

(c) *Effect of taking or using depositions.* A party shall not be deemed to make a person its own witness for any purpose by taking such person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by any other party of a deposition as described in paragraph (a)(3) of this section. At the hearing, any party may rebut any relevent evidence contained in a deposition whether introduced by it or by any other party. [Rule 209.]

§ 502.210 Refusal to comply with orders to answer or produce documents; sanctions; enforcement.

(a) *Sanctions for failure to comply with order.* If a party or an officer or duly authorized agent of a party refuses to obey an order requiring such party to answer designated questions or to produce any document or other thing for inspection, copying or photographing or to permit it to be done, the presiding officer may make such orders in regard to the refusal as are just, and among others, the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence or an order that with respect to matters regarding which the order was made or any other designated fact, inferences will be drawn adverse to the person or party refusing to obey such order;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereof, or rendering a judgement by default against the disobedient party.

(b) *Enforcement of orders and subpenas.* In the event of refusal to obey an order or failure to comply with a subpena, the Attorney General at the request of the Commission, or any party injured thereby may seek enforcement by a United States district court having jurisdiction over the parties. Any action with respect to enforcement of subpenas or orders relating to depositions, written interrogatories, or other discovery matters shall be taken within twenty (20) days of the date of refusal to obey or failure to comply. A private party shall advise the Commission five (5) days (excluding Saturdays, Sundays and legal holidays) before applying to the court of its intent to seek enforcement of such supenas and discovery orders.

(c) *Persons and documents located in a foreign country.* Orders of the presiding officer directed to persons or documents located in a foreign country shall become final orders of the Commission unless an appeal to the Commission is filed within ten (10) days after date of issuance of such orders or unless the Commission on its own motion reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No motion for leave to appeal is necessary in such instances and no orders of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 210.]

Subpart M—Briefs; Requests for Findings; Decisions; Exceptions

§ 502.221 Briefs; requests for findings.

(a) The presiding officer shall fix the time and manner of filing briefs and any enlargement of time. The period of time allowed shall be the same for all parties unless the presiding officer, for good cause shown, directs otherwise.

(b) Briefs shall be served upon all parties pursuant to Subpart H of this part.

(c) In investigations instituted on the Commission's own motion, the presiding officer may require Hearing Counsel to file a request for findings of fact and conclusions within a reasonable time prior to the filing of briefs. Service of the request shall be in accordance with the provisions of Subpart H of this part.

(d) Unless otherwise ordered by the presiding officer, opening or initial briefs shall contain the following matters in separately captioned sections: (1) Introductory section describing the nature and background of the case, (2) proposed findings of fact in serially numbered paragraphs with reference to exhibit numbers and pages of the transcript, (3) argument based upon principles of law with appropriate citations of the authorities relied upon, and (4) conclusions.

(e) All briefs shall contain a subject index or table of contents with page references and a list of authorities cited.

(f) The presiding officer may limit the number of pages to be contained in a brief. [Rule 221.]

§ 502.222 Requests for enlargement of time for filing briefs.

Requests for enlargement of time within which to file briefs shall conform to the requirements of § 502.102. Except for good cause shown, such requests shall be filed and served pursuant to Subpart H of this part not later than five (5) days before the expiration of the time fixed for the filing of the briefs. [Rule 222.]

§ 502.223 Decisions—administrative law judges.

To the administrative law judges is delegated the authority to make and serve initial or recommended decisions. [Rule 223.]

§ 502.224 Separation of functions.

The separation of functions as required by 5 U.S.C. 554(d) shall be observed in proceedings under Subparts A to Q inclusive, of this part. [Rule 224.]

§ 502.225 Decisions—contents and service.

All initial, recommended, and final decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and the appropriate rule, order, sanction, relief, or denial thereof. A copy of each decision when issued shall be served on the parties to the proceeding. In proceedings involving overcharge claims, the presiding officer may, where appropriate, require that the carrier publish notice in its tariff of the substance of the decision. This provision shall also apply to decisions issued pursuant to Subpart T of this part. [Rule 225.]

§ 502.226 Decision based on official notice, public documents.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts, or of technical or scientific facts within the general knowledge of the Commission as an expert body, provided, that where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

(b) Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a state or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered in evidence as a public document by specifying the document or relevant part thereof. [Rule 226.]

§ 502.227 Exceptions to decisions or orders of dismissal of administrative law judges; replies thereto; and review of decisions or orders of dismissal by Commission.

(a)(1) Within twenty-two (22) days after date of service of the initial decision, unless a shorter period is fixed under § 502.103, any party may file a memorandum excepting to any conclusions, findings, or statements contained in such decision, and a brief in support of such memorandum. Such exceptions and brief shall constitute one document, shall indicate with particularity alleged errors, shall indicate transcript page and exhibit number when referring to the record, and shall be served on all parties pursuant to Subpart H of this part.

(2) Any adverse party may file and serve a reply to such exceptions within twenty-two (22) days after the date of service thereof, which shall contain appropriate transcript and exhibit references.

(3) Whenever the officer who presided at the reception of the evidence, or other qualified officer, makes an initial decision, such decision shall become the decision of the Commission thirty (30) days after date of service thereof (and the Secretary shall so notify the parties), unless within such 30-day period, or greater time as enlarged by the Commission for good cause shown, request for review is made in exceptions filed or a determination to review is made by the Commission on its own initiative.

(4) Upon the filing of exceptions to, or review of, an initial decision, such decision shall become inoperative until the Commission determines the matter.

(5) Where exceptions are filed to, or the Commission reviews, an initial decision, the Commission, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision. Whenever the Commission shall determine to review an initial decision on its own initiative, notice of such intention shall be served upon the parties.

(6) The time periods for filing exceptions and replies to exceptions, prescribed by this section, shall not apply to proceedings conducted under §§ 502.67 and 502.75.

(b) (1) If an administrative law judge has granted a motion for dismissal of the proceeding in whole or in part, any party desiring to appeal must file such appeal no later than twenty-two (22) days after service of the ruling on the motion in question.

(2) Any adverse party may file and serve a reply to an appeal under this paragraph within fifteen (15) days after the date the appeal is served.

(3) The denial of a petition to intervene or withdrawal of a grant of intervention shall be deemed to be a dismissal within the meaning of this paragraph.

(c) Whenever an administrative law judge orders dismissal of a proceeding in whole or in part, such order, in the absence of appeal, shall become the order of the Commission thirty (30) days after date of service of such order (and the Secretary shall so notify the parties), unless within such 30-day period the Commission decides to review such

order on its own motion, in which case notice of such intention shall be served upon the parties.

(d) The Commission shall not, on its own initiative, review any initial decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review. [Rule 227.]

§ 502.228 Request for enlargement of time for filing exceptions and replies thereto.

Requests for enlargement of time within which to file exceptions, and briefs in support thereof, or replies to exceptions shall conform to the applicable provisions of § 502.102. Requests for extensions of these periods will be granted only under exceptional circumstances duly demonstrated in the request. Except for good cause shown, such requests shall be filed and served not later than five (5) days before the expiration of the time fixed for the filing of such documents. Any enlargement of time granted will automatically extend by the same period the date for the filing of notice or review by the Commission. [Rule 228.]

§ 502.229 Certification of record by presiding or other officer.

The presiding or other officer shall certify and transmit the entire record to the Commission when (a) exceptions are filed or the time therefor has expired, (b) notice is given by the Commission that the initial decision will be reviewed on its own initiative, or (c) the Commission requires the case to be certified to it for initial decision. [Rule 229.]

§ 502.230 Reopening by presiding officer of Commission.

(a) *Motion to reopen.* At any time after the conclusion of a hearing in a proceeding, but before issuance by the presiding officer of a recommended or initial decision, any party to the proceeding may file with the presiding officer a motion to reopen the proceeding for the purpose of receiving additional evidence. A motion to reopen shall be served in conformity with the requirements of Subpart H and shall set forth the grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) *Reply.* Within ten (10) days following service of a motion to reopen, any party may reply to such motion.

(c) *Reopening by presiding officer.* At any time prior to filing his or her decision, the presiding officer upon his or her own motion may reopen a proceeding for the reception of further evidence.

(d) *Reopening by the Commission.* Where a decision has been issued by the presiding officer or where a decision by the presiding officer has been omitted, but before issuance of a Commission decision, the Commission may, after petition and reply in conformity with paragraphs (a) and (b) of this section, or upon its own motion, reopen a proceeding for the purpose of taking further evidence.

(e) *Remand by the Commission.* Nothing contained in this rule shall preclude the Commission from remanding a proceeding to the presiding officer for the taking of additional evidence or determining points of law. [Rule 230.]

Subpart N—Oral Argument; Submission for Final Decision

§ 502.241 Oral argument.

(a) If oral argument before the Commission is desired on exceptions to an initial or recommended decision, or on a motion, petition, or application, a request therefor shall be made in writing. Any party may make such request irrespective of its filing exceptions under § 502.227. If a brief on exceptions is filed, the request for oral argument shall be incorporated in such brief. Requests for oral argument on any motion, petition, or application shall be made in the motion, petition or application, or in the reply thereto.

(b) Applications for oral argument will be granted or denied in the discretion of the Commission, and, if granted, the notice of oral argument will set forth the order of presentation. Upon request, the Commission will notify any party of the amount of time which will be allowed it.

(c) Those who appear before the Commission for oral argument shall confine their argument to points of controlling importance raised on exceptions or replies thereto. Where the facts of a case are adequately and accurately dealt with in the initial or recommended decision, parties should, as far as possible, address themselves in argument to the conclusions.

(d) Effort should be made by parties taking the same position to agree in advance of the argument upon those persons who are to present their side of the case, and the names of such persons and the amount of time requested should be received by the Commission not later than ten (10) days before the date set for the argument. The fewer the number of persons making the argument the more effectively can the parties' interests be presented in the time allotted. [Rule 241.]

§ 502.242 Submission to Commission for final decision.

A proceeding will be deemed submitted to the Commission for final decision as follows: (a) If oral argument is had, the date of completion thereof, or if memoranda on points of law are permitted to be filed after argument, the last date of such filing; (b) if oral argument is not had, the last date when exceptions or replies thereto are filed, or if exceptions are not filed, the expiration date for such exceptions; (c) in the case of an initial decision, the date of notice of the Commission's intention to review the decision, if such notice is given. [Rule 242.]

§ 502.243 Participation of absent Commissioner.

Any Commissioner who is not present at oral argument and who is otherwise authorized to participate in a decision shall participate in making that decision after reading the transcript of oral argument unless he or she files in writing an election not to participate. [Rule 243.]

Subpart O—Reparation

§ 502.251 Proof on award of reparation.

If many shipments or points of origin or destination are involved in a proceeding in which reparation is sought (See § 502.63), the Commission will determine in its decision the issues as to violations, injury to complainant, and right to reparation. If complainant is found entitled to reparation, the parties thereafter will be given an opportunity to agree or make proof respecting the shipments and pecuniary amount of reparation due before the order of the Commission awarding reparation is entered. In such cases, freight bills and other exhibits bearing on the details of all shipments, and the amount of reparation on each, need not be produced at the original hearing unless called for or needed to develop other pertinent facts. [Rule 251.]

§ 502.252 Reparation statements.

When the Commission finds that reparation is due, but that the amount cannot be ascertained upon the record before it, the complainant shall immediately prepare a statement in accordance with the approved reparation statement in Exhibit No. 1 to

this subpart, showing details of the shipments on which reparation is claimed. This statement shall not include any shipments not covered by the findings of the Commission. Complainant shall forward the statement, together with the paid freight bills on the shipments, or true copies thereof, to the respondent or other person who collected the charges for checking and certification as to accuracy. Statements so prepared and certified shall be filed with the Commission for consideration in determining the amount of reparation due. Disputes concerning the accuracy of amounts may be assigned for conference by the Commission, or in its discretion referred for further hearing. [Rule 252.]

§ 502.253 Interest and attorney's fees in reparation proceedings.

(a) Except as to applications for refund or waiver of freight charges under § 502.92 and claims which are settled by agreement of the parties, and absent fraud or misconduct of a party, interest will be granted on awards of reparation in cases involving the misrating of cargo and arising under section 10(b) of the Shipping Act of 1984 and section 2 of the Intercoastal Shipping Act, 1933. Interest awarded in reparation proceedings will accrue from the date of injury to the date specified in the Commission order awarding reparations. Normally, the date specified within which payment must be made will be fifteen (15) days subsequent to the date of service of the Commission Order. The rate of interest will be derived from the average monthly rates on six-month U.S. Treasury bills commencing with the rate for the month that the injury occurred and concluding with the latest available monthly Treasury bill rate at the date of the Commission Order awarding reparations. Compounding will be daily from the date of injury to the date specified in the Commission Order awarding reparations. The monthly rates on six-month U.S. Treasury bills for the reparation period will be summed and divided by the number of months for which interest rates are available in the reparation period to determine the average interest rate applicable during the period.

(b) The Commission shall also award reasonable attorney's fees in reparation proceedings. [Rule 253.]

Exhibit No. 1 to Subpart O [§ 502.252]—Reparation Statement To Be Filed Pursuant to Rule 252

Claim of _____ under the decision of the Federal Maritime Commission in Docket No. _____.

Date of B/L	Date of delivery or tender of delivery	Date charges paid	Vessel	Voyage No.	Port of origin	Destination port	Route	Commodity	Weight or measurement	As charged		Should be		Reparation	Charges paid by*
										Rate	Amount	Rate	Amount		

*Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

Total amount of reparation $_____.

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date _____.

_____ Steamship Company, Collecting Carrier Respondent,

by _____, Auditor

By _____, *Claimant*

_____, *Attorney*

(address and date)

Subpart P—Reconsideration of Proceedings

§ 502.261 Petitions for reconsideration and stay.

(a) Within thirty (30) days after issuance of a final decision or order by the Commission, any party may file a petition for reconsideration. Such petition shall be served in conformity with the requirements of Subpart H of this part. A petition will be subject to summary rejection unless it:

(1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order;

(2) Identifies a substantive error in material fact contained in the decision or order; or

(3) Addresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment or which was not addressed in the briefs or arguments of any party. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. A petition shall be verified if verification of the original pleading is required and shall not operate as a stay of any rule or order of the Commission.

(b) A petition for stay of a Commission order which directs the discontinuance of statutory violations will not be received.

(c) The provisions of this section are not applicable to decisions issued pursuant to Subpart S of this part. [Rule 261.]

§ 502.262 Reply.

Any party may file a reply to a petition for reconsideration within fifteen (15) days after the date of service of the petition in accordance with § 502.74. The reply shall be served in conformity with Subpart H. [Rule 262.]

Subpart Q—Schedules and Forms

§ 502.271 Schedule of information for presentation in regulatory cases.

The following approved forms and illustrative wording for use in Commission proceedings appear in this part as follows:

(a) *Notice of Appearance.* Exhibit No. 1 to Subpart B [following § 502.32].

(b) *Certification.* Certification of non-disclosure by persons requesting underlying data from carriers filing general rate increase or decrease § 502.67(a)(3)].

(c) *Complaint.* Exhibit No. 1 to Subpart E [following § 502.75].

(d) *Verification.* See complaint form in Exhibit No. 1 to Subpart E [following § 502.75].

(e) *Answer to Complaint.* Exhibit No. 2 to Subpart E [following § 502.75].

(f) *Petition for Leave to Intevene.* Exhibit No. 3 to Subpart E [following § 502.75].

(g) *Special Docket Application.* Exhibit No. 1 to Subpart F [following § 502.95].

(h) *Certificate of Service.* § 502.117 [Subpart H]. See also § 502.320 for small claims.

(i) *Reparation Statement.* Where the Commission finds reparation is due but

that the amount cannot be ascertained: Exhibit No. 1 to Subpart O [following § 502.253].

(j) *Small Claim Form for Informal Adjudication.* Exhibit No. 1 to Subpart S [following § 502.305].

(k) *Respondent's Consent Form for Informal Adjudication.* Exhibit No. 2 to Subpart S [following § 502.305]. [Rule 271.]

Subpart R—Nonadjudicatory Investigations

§ 502.281 Investigational policy.

The Commission has extensive regulatory duties under the various acts it is charged with administering. The conduct of investigations is essential to the proper exercise of the Commission's regulatory duties. It is the purpose of this subpart to establish procedures for the conduct of such investigations which will insure protection of the public interest in the proper and effective administration of the law. The Commission encourages voluntary cooperation in its investigations where such can be effected without delay or without prejudice to the public interest. The Commission may, in any matter under investigation, invoke any or all of the compulsory processes authorized by law. [Rule 281.]

§ 502.282 Initiation of investigations.

Commission inquiries and nonadjudicatory investigations are originated by the Commission upon its own motion when in its discretion the Commission determines that information is required for the purposes of rulemaking or is necessary or helpful in the determination of its policies or the carrying out of its duties, including whether to institute formal proceedings directed toward determining whether any of the laws which the Commission administers have been violated. [Rule 282.]

§ 502.283 Order of investigation.

When the Commission has determined that an investigation is necessary, an Order of Investigation shall be issued. [Rule 283.]

§ 502.284 By whom conducted.

Investigations are conducted by Commission representatives designated and duly authorized for the purpose. (See § 502.25.) Such representatives are authorized to exercise the duties of their office in accordance with the laws of the United States and the regulations of the Commission, including the resort to all compulsory processes authorized by law, and the administration of oaths and affirmances in any matters under investigation by the Commission. [Rule 284.]

§ 502.285 Investigational hearings.

(a) Investigational hearings, as distinguished from hearings in adjudicatory proceedings, may be conducted in the course of any investigation undertaken by the Commission, including inquiries initiated for the purpose of determining whether or not a person is complying with an order of the Commission.

(b) Investigational hearings may be held before the Commission, one or more of its members, or a duly designated representative, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be stenographically reported and a transcript thereof shall be made a part of the record of investigation. [Rule 285.]

§ 502.286 Compulsory process.

The Commission, or its designated representative may issue orders or subpenas directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence relating to any matter under investigation, or both. Such orders and subpenas shall be served in the manner provided in § 502.134. [Rule 286.]

§ 502.287 Depositions.

The Commission, or its duly authorized representative, may order testimony to be taken by deposition in any investigation at any stage of such investigation. Such depositions may be taken before any person designated by the Commission having the power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his or her direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence as provided in § 502.131. [Rule 287.]

§ 502.288 Reports.

The Commission may issue an order requiring a person to file a report or answers in writing to specific questions relating to any matter under investigation. [Rule 288.]

§ 502.289 Noncompliance with investigational process.

In case of failure to comply with Commission investigational processes, appropriate action may be initiated by the Commission, including actions for enforcement by the Commission or the Attorney General and forfeiture of penalties or criminal actions by the Attorney General. [Rule 289.]

§ 502.290 Rights of witness.

Any person required to testify or to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, procure a copy of any document produced by such person and of his or her own testimony as stenographically reported or, in the depositions, as reduced to writing by or under the direction of the person taking the deposition. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, but counsel may not, as a matter or right, otherwise participate in the investigation. [Rule 290.]

§ 502.291 Nonpublic proceedings.

Unless otherwise ordered by the Commission, all investigatory proceedings shall be nonpublic. [Rule 291.]

Subpart S—Informal Procedure for Adjudication of Small Claims

§ 502.301 Statement of Policy.

(a) Section 11(a) of the Shipping Act of 1984 permits any person to file a complaint with the Commission claiming a violation occurring in connection with the foreign commerce of the United States and to seek reparation for any injury caused by that violation.

(b) Section 22 of the Shipping Act, 1916, permits any person to file a complaint against any common carrier by water in interstate and offshore domestic commerce or against any other person subject to the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, claiming a violation of those statutes and to seek reparation for that violation.

(c) With the consent of both parties, claims filed under this subpart in the amount of $10,000 or less will be referred to the Commission's Informal Dockets Activity for adjudication and decision by its Settlement Officers without the necessity of formal proceedings under the rules of this part.

(d) Determination of claims under this subpart shall be administratively final and conclusive. [Rule 301.]

§ 502.302 Limitations of Actions.

(a) Claims alleging violations of the Shipping Act of 1984 must be filed within three years from the time the cause of action accrues.

(b) Claims alleging violations of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, must be filed within two years from the time the cause of action arises.

(c) A claim is deemed filed on the date it is received by the Commission. [Rule 302.]

§ 502.303 [Reserved]

§ 502.304 Procedure and filing fee.

(a) A sworn claim under this subpart shall be filed in the form prescribed in Exhibit No. 1 to this subpart. Three (3) copies of this claim must be filed, together with the same number of copies of such supporting documents as may be deemed necessary to establish the claim. Copies of tariff pages need not be filed; reference to such tariffs or to pertinent parts thereof will be sufficient. Supporting documents may consist of affidavits, correspondence, bills of lading, paid freight bills, export declarations, dock or wharf receipts, or of such other documents as, in the judgment of the claimant, tend to establish the claim. The Settlement Officer may, if deemed necessary, request additional documents or information from claimants. Claimant may attach a memorandum, brief or other document containing discussion, argument, or legal authority in support of its claim. If a claim filed under this subpart involves any shipment which has been the subject of a previous claim filed with the Commission, formally or informally, full reference to such previous claim must be given.

(b) Claims under this subpart shall be addressed to the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Such claims shall be accompanied by remittance of a $25 filing fee.

(c) Each claim under this subpart will be acknowledged with a reference to the Informal Docket Number assigned. The number shall consist of a numeral(s) followed by capital "I" in parentheses. All further correspondence pertaining to such claims must refer to the assigned Informal Docket Number. If the documents filed fail to establish a claim for which relief may be granted, the parties affected will be so notified in writing. The claimant may thereafter, but only if the period of limitation has not run, resubmit its claim with such additional proof as may be necessary to establish the claim. In the event a complaint has been amended because it failed to state a claim upon which relief may be granted, it will be considered as a new complaint.

(d) A copy of each claim filed under this subpart, with attachments, shall be served by the Settlement Officer on the respondent involved.

(e) Within twenty-five (25) days from the date of service of the claim, the respondent shall serve upon the claimant and file with the Commission its response to the claim, together with an indication, in the form prescribed in Exhibit No. 2 to this subpart, as to whether the informal procedure provided in this subpart is consented to. Failure of the respondent to indicate refusal or consent in its response will be conclusively deemed to indicate such consent. The response shall consist of documents, arguments, legal authorities, or precedents, or any other matters considered by the respondent to be a defense to the claim. The Settlement Officer may request the respondent to furnish such further documents or information as deemed necessary, or he or she may require the claimant to reply to the defenses raised by the respondent.

(f) If the respondent refuses to consent to the claim being informally adjudicated pursuant to this subpart, the claim will be considered a complaint under § 502.311 and will be adjudicated under Subpart T of this part.

(g) Both parties shall promptly be served with the Settlement Officer's decision which shall state the basis upon which the decision was made. Where appropriate, the Settlement Officer may require that the respondent publish notice in its tariff of the substance of the decision. This decison shall be final, unless, within thirty (30) days from the date of service of the decision, the Commission exercises its discretionary right to review the decision. The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review.

(h) Within thirty (30) days after service of a final decision by a Settlement Officer, any party may file a petition for reconsideration. Such petition shall be directed to the Settlement Officer and shall act as a stay of the review period prescribed in paragraph (g) of this section. A petition will be subject to summary rejection unless it: (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order; (2) identifies a substantive error in material fact contained in the decision or order; (3) addresses a material matter in the Settlement Officer's decision upon which the petitioner has not previously had the opportunity to comment. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. Upon issuance of a decision or order on reconsideration by the Settlement Officer, the review period prescribed in paragraph (g) of this section will recommence. [Rule 304.]

§ 502.305 Applicability of other rules of this part.

Except as specifically provided in this subpart, the Rules in Subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart. [Rule 321.]

Exhibit No. 1 to Subpart S [§ 502.304(a)]—Small Claim Form for Informal Adjudication and Information Checklist

Federal Maritime Commission, Washington, D.C.

Informal Docket No.———

(Claimant)

vs.

(Respondent)

I. The claimant is [state in this paragraph whether claimant is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

II. The respondent named above is [state in this paragraph whether respondent is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

III. That [state in this and subsequent paragraphs to be lettered A, B, etc., the matters that gave rise to the claim. Name specifically each rate, charge, classification, regulation or practice which is challenged. Refer to tariffs, tariff items or rules, or agreement numbers, if known. If claim is based on the fact that a firm is a common carrier, state where it is engaged in transportation by water and which statute(s) it is subject to under the jurisdiction of the Federal Maritime Commission].

IV. If claim is for overcharges, state commodity, weight and cube, origin, destination, bill of lading description, bill of lading number and date, rate and/or charges assessed, date of delivery, date of payment, by whom paid, rate or charge claimed to be correct and amount claimed as overcharges. [Specify tariff item for rate or charge claimed to be proper].

V. State section of statute claimed to have been violated. (Not required if claim is for overcharges).

VI. State how claimant was injured and amount of damages requested.

VII. The undersigned authorizes the Settlement Officer to determine the above-stated claim pursuant to the informal procedure outlined in Subpart S (46 CFR 502.301–502.305) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission review.

Attach memorandum or brief in support of claim. Also attach bill of lading, copies of correspondence or other documents in support of claim.

_____

(Date)

_____

(Claimant's signature)

_____

(Claimant's address)

_____

(Signature of agent or attorney)

_____

(Agent's or attorney's address)

Verification

State of ———, County of ———, ss: ———, being first duly sworn on oath deposes and says that he or she is

_____

The claimant [or if a firm, association, or corporation, state the capacity of the affiant] and is the person who signed the foregoing claim, that he or she has read the foregoing and that the facts set forth without qualification are true and that the facts stated therein upon information received from others, affiant believes to be true.

_____

Subscribed and sworn to before me, a notary public in and for the State of ———, County of ———, this —— day of ——— 19—. (Seal)

_____

(Notary Public)

My Commission expires, _____

Information To Assist in Filing Informal Complaints

Informal Docket procedures are limited to claims of $10,000 or less and are appropriate only in instances when an evidentiary hearing on disputed facts is not necessary. Where, however, a respondent elects not to consent to the informal procedures [See Exhibit No. 2 to Subchapter S], the claim will be adjudicated by an administrative law judge under Subpart T of Part 502.

Under the Shipping Act of 1984 [for foreign commerce], the claim must be filed within three (3) years from the time the cause of action accrues and may be brought against any person alleged to have violated the 1984 Act to the injury of claimant.

Under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933 [domestic commerce], the claim must be filed within two (2) years from the time the cause of action accrues and may only be brought against a "person subject to the Act", e.g., a common carrier, terminal operator or freight forwarder.

If the claim is for "damages" as defined in § 502.303, a violation of a specific section of a particular shipping statute must be alleged.

The format of Exhibit No. 1 must be followed and a *verification must be included* where the claimant is not represented by an attorney or other person qualified to practice before the Commission. [See §§ 502.21–502.32 and § 502.112.] An original and two (2) copies of the claim *and all attachments*, including a brief in support of the claim, must be submitted.

Exhibit No. 2 to Subpart S [§ 502.304(e)]—Respondent's Consent Form for Informal Adjudication

Federal Maritime Commission, Washington, D.C.

Informal Docket No. ———

Respondent's Affidavit

I authorize the Settlement Officer to determine the above-numbered claim in accordance with Subpart S (46 CFR 502) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission Review.

(Date) _____

(Signed) _____

(Capacity) _____

Verification

State of ———, County of ———, ss: ———, being first duly sworn on oath deposes and says that he or she is ———, (Title or Position) and is the person who signed the foregoing and agrees without qualification to its truth.

_____

Subscribed and sworn to before me, a notary public in and for the State of ———, County of ———, this —— day of ———, 19—. (Seal)

_____

(Notary Public)

My Commission expires _____.

Certificate of Service [See § 502.320]

Subpart T—Formal Procedure for Adjudication of Small Claims

§ 502.311 Applicability.

In the event the respondent elects not to consent to determination of the claim under Subpart S of this part, it shall be adjudicated by the administrative law judges of the Commission under procedures set forth in this subpart, if timely filed under § 502.302. The previously assigned Docket Number shall be used except that it shall now be followed by capital "F" instead of "I" in parentheses (See § 502.304(c)). The complaint shall consist of the documents submitted by the claimant under Subpart S of this part. [Rule 311.]

§ 502.312 Answer to complaint.

The respondent shall file with the Commission an answer within twenty-five (25) days of service of the complaint and shall serve a copy of said answer upon complaint. The answer shall admit or deny each matter set forth in the complaint. Matters not specifically denied will be deemed admitted. Where matters are urged in defense, the answer shall be accompanied by appropriate affidavits, other documents, and memoranda. [Rule 312.]

§ 502.313 Reply of complainant.

Complainant may, within twenty (20) days of service of the answer filed by respondent, file with the Commission and serve upon the respondent a reply memorandum accompanied by appropriate affidavits and supporting documents. [Rule 313.]

§ 502.314 Additional information.

The administrative law judge may require the submission of additional affidavits, documents, or memoranda from complainant or respondent. [Rule 314.]

§ 502.315 Request for oral hearing.

In the usual course of disposition of complainants filed under this subpart, no oral hearing will be held, but, the administrative law judge, in his or her discretion, may order such hearing. A request for oral hearing may be incorporated in the answer or in complaint's reply to the answer. Requests for oral hearing will not be entertained unless they set forth in detail the reasons why the filing of affidavits or other documents will not permit the fair and expeditious disposition of the claim, and the precise nature of the facts sought to be proved at such oral hearing. The administrative law judge shall rule upon a request for oral hearing within (10) days of its receipt. In the event an oral hearing is ordered, it will be held in accordance with the rules applicable to other formal proceedings, as set forth in Subparts A through Q of this part. [Rule 315.]

§ 502.316 Intervention.

Intervention will ordinarily not be permitted. [Rule 316.]

§ 502.317 Oral argument.

No oral argument will be held, unless otherwise directed by the administrative law judge. [Rule 317.]

§ 502.318 Decision.

The decision of the administrative law judge shall be final, unless, within twenty-two (22) days from the date of service of the decision, either party

requests review of the decision by the Commission, asserting as grounds therefor that a material finding of fact or a necessary legal conclusion is erroneous or that prejudicial error has occurred, or unless, within thirty (30) days from the date of service of the decision, the Commission exercises its discretionary right to review the decision. The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review. [Rule 318.]

§ 502.319 Date of service and computation of time.

The date of service of documents served by the Commission shall be that which is shown in the service stamp thereon. The date of service of documents served by parties shall be the date when the matter served is mailed or delivered in person, as the case may be. When the period of time prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded from the computation. [Rule 319.]

§ 502.320 Service.

All claims, resubmitted claims, petitions to intervene and rulings thereon, notices of oral hearings, notices of oral arguments (if necessary), decisions of the administrative law judge, notices of review, and Commission decisions shall be served by the administrative law judge or the Commission. All other pleadings, documents and filings shall, when tendered to the Commission, evidence service upon all parties to the proceeding. Such certificate shall be in substantially the following form:

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by [mailing, delivering to courier, or delivering in person], a copy to each such person in sufficient time to reach such person on the date the document is due to be filed with the Commission.

Dated at ——— this ——— day of ———, 19—.

(Signature) ———————————

(For) ———————————

[Rule 320.]

§ 502.321 Applicability of other rules of this part.

Except as specifically provided in this subpart, rules in Subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart. [Rule 321.]

Subpart U—Conciliation Service

§ 502.401 Definitions.

For purposes of this subpart:

(a) *"Disputes"* means disagreements between two or more parties arising from the transportation of goods or the performance of services in connection with such transportation in the domestic offshore commerce or the foreign commerce of the United States; a difference of opinion regarding the interpretation of any tariff, rate, rule, or regulation; a disagreement regarding the performance of any service in connection with such transportation; a disagreement with respect to an alleged violation of the shipping statutes; and other disagreement or opposing opinion regarding any matter connected with transportation of cargoes in the waterborne commerce of the United States. This definition is limited to those disputes which fall within the jurisdiction of the Federal Maritime Commission.

(b) *"Shipping statutes"* means the Shipping Act of 1984, 46 U.S.C. app. 1701–1720; Shipping Act, 1916, 46 U.S.C. app. 801 et seq.; Merchant Marine Act, 1936, 46 U.S.C. app. 1101 et seq.; Merchant Marine Act, 1920, 46 U.S.C. app. 861 et seq., the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 et seq.; and amendments of and Acts relating to the foregoing, to the extent of the Federal Maritime Commission's jurisdiction under such Acts.

(c) *"Advisory opinions"* means non-binding conclusions reached by a conciliator on the basis of oral presentation and/or documentary authority.

(d) *"Domestic offshore commerce"* means waterborne common carriage between:

(1) The Continental United States and Alaska or Hawaii;

(2) Alaska and Hawaii;

(3) The United States or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(4) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession or district; and

(5) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia); and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Chapter 105.

(e) *"Foreign commerce"* means waterborne common carriage between the United States or any of its territories, commonwealths, districts or possessions, and a foreign country. [Rule 401.]

§ 502.402 Policy.

It is the policy of the Federal Maritime Commission:

(a) To offer its good offices and expertise to parties to disputes involving matters within its jurisdiction, so as to permit resolution of such disputes with dispatch and without the necessity of costly and time-consuming formal proceedings;

(b) To facilitate and promote the resolution of problems and disputes by encouraging affected parties to resolve differences through their own resources;

(c) To create a forum in which grievances, interpretations, problems, and questions involving the waterborne commerce of the United States may be aired, discussed and, hopefully, resolved to the mutual advantage of all concerned parties. [Rule 402.]

§ 502.403 Persons eligible for service.

Request for conciliation service may be made by any shipper, shippers' association, merchant, carrier, conference of carriers, freight forwarder, marine terminal operator, Government agency, or any other person affected by or involved in the transportation of goods by common carrier in the waterborne domestic offshore or foreign commerce of the United States. [Rule 403.]

§ 502.404 Procedure and fee.

(a) The request for conciliation should be addressed to the Federal Maritime Commission Conciliation Service, Washington, D.C. 20573, and should contain the details of the dispute, names and addresses of all involved parties, the contentions of each party or parties, and copies of any documents that are relevant to the disposition of the issues. If the request is made by any one party to the dispute, the party requesting conciliation should mail or deliver to the other party or parties to the dispute a copy of the letter of request, with attachments, if any. The request shall be accompanied by remittance of a $25 service fee.

(b) Each matter will be assigned a number prefixed by the letters FMCCS and assigned to a conciliator for disposition and the involved parties will be informed of the case number and the name of the conciliator.

(c) While it is preferable that all parties involved in a dispute request a

service jointly, a request by a single party for the service will be acted upon, provided all parties agree that the dispute should be conciliated. In the event that the request is made by only one party, the conciliator will contact the other party or parties to the dispute and be advised as to whether such parties agree to participate in the conciliation. If the other party or parties to the dispute do not agree to the Conciliation Service, no further action will be taken by the conciliator and the conciliation ceases.

(d) The parties will be free to determine the best procedures to be used with the qualification that the conciliator may disapprove procedures that would in his or her opinion be either too time-consuming or involve inordinate expense to the Federal Maritime Commission. The parties may agree to (1) fix a time and place for the oral presentation of each party's contention; and (2) request affidavits, documents, or other materials that could help resolve the dispute. The conciliator will be in a strictly advisory capacity. There will be no written record of the conciliation discussions.

(e) Participation in the conciliation of a dispute is purely voluntary at all stages and the parties involved may withdraw at any time without prejudice. [Rule 404.]

§ 502.405 Assignment of conciliator.

The Secretary of the Commission, giving due regard to the type and complexity of the problem presented and the degree of expertise required, will assign a conciliator to each dispute. [Rule 405.]

§ 502.406 Advisory opinion.

(a) The conciliator will write an advisory opinion that must meet the approval of all parties. If the advisory opinion, or revision thereof requested by one or more of the parties, is not unanimously agreed upon, then the conciliation will cease, without prejudice to any of the parties involved. If unanimity is not reached, the conciliator will note in a report to the Commission, which shall be served on all parties, that the parties failed to reach agreement. Only if unanimity is reached will the informal advisory opinion, although not binding, be sent to all interested parties and be made available to the public.

(b) There will be no appeal from, or review of, such opinions and any party may pursue any further course of action under any other rule or statute that it deems advisable. [Rule 406.]

Subpart V—Paperwork Reduction Act

§ 502.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this part comply with the Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement:

Section	Current OMB control No.
502.27 (Form FMC.12)	3072-0001

PART 503—PUBLIC INFORMATION

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Authority: 5 U.S.C. 552, 552a, 552b, 553, E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

Subpart A—General

§ 503.1 Statement of policy.

(a) The Chairman of the Federal Maritime Commission is responsible for the effective administration of the provisions of Pub. L. 89–487, as amended. The Chairman shall carry out this responsibility through the program and the officials as hereinafter provided in this part.

(b) In addition, the Chairman, pursuant to his responsibility, hereby

directs that every effort be expended to facilitate the maximum expedited service to the public with respect to the obtaining of information and records. Accordingly, members of the public may make requests for information, records, decisions or submittals in accordance with the provisions of § 503.31.

Subpart B—Publication in the "Federal Register"

§ 503.11 Materials to be published.

(a) The Commission shall separately state and concurrently publish the following materials in the **Federal Register** for the guidance of the public:

(1) Descriptions of its central and field organization 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) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(5) Every amendment, revision, or repeal of the foregoing.

(b) The Commission's publication with respect to paragraph (a)(1) of this section has been and shall continue to be by publication in the **Federal Register** of the Rules and Regulations, Commission Order No. 1 (Amended), and amendments and supplements thereto.

(c) The Commission's publications with respect to paragraphs (a)(2), (a)(3), and (a)(4) of this section, including amendments, revisions, and repeals, have been and shall continue to be by publication in the **Federal Register** as part of the Code of Federal Regulations, Title 46, Chapter IV.

§ 503.12 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any matter required to be published in the **Federal Register** and not so published.

§ 503.13 Incorporated by reference.

For purposes of this subpart, matter which is reasonably available to the class of persons affected hereby shall be deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Office of the **Federal Register**.

Subpart C—Commission Opinions and Orders

§ 503.21 Public records.

(a) The Commission shall, in accordance with this part, make the following materials available for public inspection and copying:

(1) Final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases.

(2) Those statements of poilcy and interpretations which have been adopted by the Commission.

(3) Administrative staff manuals and instructions to staff that affect any member of the public.

(b) To prevent unwarranted invasion of personal privacy, the Commission may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, and shall, in each case, explain in writing the justification for the deletion.

§ 503.22 Current index.

The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated, and which is required by Subpart B of this part to be made available or published. The index shall be available at the Office of the Secretary, Washington, D.C. 20573. Publication of such indices has been determined by the Commission to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefor made in accordance with Subpart D of this part.

§ 503.23 Effect of noncompliance.

No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited, as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this subpart, or unless that private party shall have actual and timely notice of the terms thereof.

§ 503.24 Documents available at the Communications Center.

The following documents have been promulgated by the Commission and are available for inspection and copying at the Commission's Communications Center, 1100 L Street, NW., Washington, D.C. 20573:

(a) Rules and regulations of the Commission including general substantive rules.

(b) Rules of Practice and Procedure.

(c) Annual reports of the Commission.

(d) Shipping Act, 1916, Shipping Act of 1984, and related acts.

§ 503.25 Documents available at the Office of the Secretary.

The following documents are available for inspection and copying at the Federal Maritime Commission, Office of the Secretary, Washington, D.C. 20573:

(a) Proposed rules.

(b) Final rules.

(c) Report of decisions (including concurring and dissenting opinions), orders and notices in all formal proceedings and pertinent correspondence.

(d) Press releases, biographies, etc.

(e) Pamphlets.

(f) Official docket files (transcripts, exhibits, briefs, etc.) in all formal proceedings.[1]

(g) Approved minutes showing final votes.

(h) Correspondence to or from the Commission or Administrative Law Judges concerning docketed proceedings.

Subpart D—Procedure Governing Availability of Commission Records

§ 503.31 Identification of records.

A member of the public who requests permission to inspect, copy or be provided with any records described in §§ 503.11, 503.21, 503.24 and 503.25 shall:

(a) Reasonably describe the record or records sought; and

(b) Submit such request in writing to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Any such request shall be clearly marked on the exterior with the letters FOIA.

§ 503.32 Records generally available.

The following records are available for inspection and copying upon request in writing addressed to the Office of the Secretary:

[1] Copies of transcripts may be purchased from the reporting company contracted for by the Commission. Contact the Office of the Secretary for the name and address of this company.

(a) Agreements filed and in effect pursuant to section 15 of the Shipping Act, 1916 and sections 5 and 6 of the Shipping Act of 1984.

(b) Agreements filed under section 15 of the Shipping Act, 1916 and section 5 of the Shipping Act of 1984 which have been noticed in the **Federal Register.**

(c) Tariffs filed under the provisions of the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, and the Shipping Act of 1984.

(d) Terminal tariffs filed pursuant to Part 515 of this chapter.

(e) List of certifications of financial responsibility pertaining to Pub. L. 89–777.

(f) List of licensed ocean freight forwarders.

§ 503.33 Other records available upon written request.

Any written request to the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573, for records listed in paragraphs (a) through (e), inclusive, of this section, shall identify the record as provided in § 503.31. The Secretary shall evaluate each request in conjunction with the official having responsibility for the subject matter area, and the General Counsel, and the Secretary shall determine whether or not to grant the request in accordance with the provisions of § 503.34. There follows the categories of records subject to this provision:

(a) Correspondence:

(1) General correspondence.

(2) Correspondence regarding interpretation or applicability of a statute or rule.

(3) Correspondence regarding methods of compliance with rules and regulations.

(4) Correspondence and reports on legislation if made public by the Office of Management and Budget and the appropriate Congressional Committee.

(b) Staff reports served on a party at interest.

(c) Filings:

(1) Reports on self-policing.

(2) Notice of admission and denial of conference membership.

(3) Procedures and reports regarding shippers' requests and complaints.

(4) Applications for license as ocean freight forwarder with the exceptions of those portions protected from public disclosure under the Freedom of Information Act.

(d) Staff records:

(1) Advisory opinions to the public.

(2) Nonconfidential records.

(e) Court records in which the Commission is a party.

(1) Briefs filed in court.

(2) Court decisions.

§ 503.34 Procedures on requests for documents.

(a) Determination of compliance with requests for documents.

(1) Upon request by any member of the public for documents, made in accordance with the rules of this part, the Commission's Secretary or his or her delegate in his or her absence, shall determine whether or not such request shall be granted.

(2) Except as provided in paragraph (c) of this section, such determination shall be made by the Secretary within ten (10) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such request.

(3) The Secretary shall immediately notify the party making such request of the determination made, the reasons therefor, and, in the case of a denial of such request, shall notify the party of its right to appeal that determination to the Chairman.

(b) Appeals from adverse determination (denial of request).

(1) Any party whose request for documents or other information pursuant to this part has been denied in whole or in part by the Secretary may appeal such determination. Any such appeal shall be addressed to: Chairman, Federal Maritime Commission, Washington, D.C. 20573, and shall be submitted within a reasonable time following receipt by the party of notification of the initial denial by the Secretary in the case of a total denial of the request, or within a reasonable time following request, or within a reasonable time following receipt of any of the records requested in the case of a partial denial. In no case shall an appeal be filed later than ten (10) working days following receipt of notification of denial or receipt of a part of the records requested.

(2) Upon appeal from any denial or partial denial of a request for documents by the Secretary, the Chairman of the Federal Maritime Commission, or the Chairman's specific delegate in his or her absence, shall make a determination with respect to that appeal within twenty (20) days (excepting Saturdays, Sundays and legal public holidays) after receipt of such appeal, except as provided in paragraph (c) of this section. If, on appeal, the denial is upheld, either in whole or in part, the Chairman shall so notify the party submitting the appeal and shall notify such person of the provisions of paragraph 4 of subsection (a) of the FOIA (Pub. L. 93–502, 88 Stat. 1561–1562, November 21, 1974) regarding judicial review of such determination upholding the denial. Notification shall also include the statement that the determination is that of the Chairman of the Federal Maritime Commission and the name of the Chairman.

(c) *Exception to time limitation.* In unusual circumstances, as specified in this paragraph, the time limits prescribed with respect to initial actions or actions on appeal may be extended by written notice from the Secretary of the Commission to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten (10) working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) *Effect of failure by Commission to meet the time limitation.* Failure by the Commission either to deny or grant any request for documents within the time limits prescribed by FOIA (5 U.S.C. 522, as amended) and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making the request.

§ 503.35 Exceptions to availability of records.

(a) Except as provided in paragraph (b) of this section, the following records shall not be available:

(1) Records specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to such Executive Order. Records to which this provision applies shall be deemed by the Commission to have been properly classified. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated

the record as nonpublic under Executive Order.

(2) Records related solely to the internal personnel rules and practices of the Commission. Such records relate to those matters which are for the guidance of Commission personnel with respect to their employment with the Federal Maritime Commission.

(3) Records specifically exempted from disclosure by statute.

(4) Information given in confidence. This includes information obtained by or given to the Commission which constitutes trade secrets, confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(5) Interagency or interagency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include interagency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission, the Secretary, and the General Counsel, regarding the preparation of Commission orders and decisions, other documents received or generated in the process of issuing an order, decision, or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy. This exemption includes all personnel and medical records and all private, personal, financial, or business information contained in other files which, if disclosed to the public, would invade the privacy of any person, including members of the family of the person to whom the information pertains.

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by any agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative tehniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel. Any record, portions of which are exempt under the provisions of this section, will be provided to any person requesting such record after the exempt portions thereof have been deleted, provided such nonexempt portions are reasonably segregable.

(b) Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this part, nor shall this part be authority to withhold information from Congress.

§ 503.36 Commission report of actions.

On or before March 1 of each calendar year, the Federal Maritime Commission shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. This report shall include:

(a) The number of determinations made by the Federal Maritime Commission not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination.

(b) The number of appeals made by persons under such provisions, the result of such appeals, and the reasons for the action upon each appeal that results in a denial of information.

(c) The name and title or position of each person responsible for the denial of records requested under the provisions of this part and the number of instances of participation for each.

(d) The results of each proceeding conducted pursuant to subsection (a)(4)(F) of FOIA, as amended November 21, 1974, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(e) A copy of every rule made by the Commission implementing the provisions of the FOIA, as amended November 21, 1974.

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section.

(g) Such other information as indicates efforts to administer fully the provisions of the FOIA, as amended.

Subpart E—Fees

§ 503.41 Policy and services available.

Pursuant to policies established by the Congress, the Government's costs for special services furnished to individuals or firms who request such service are to be recovered by the payment of fees (Act of August 31, 1951–5 U.S.C. 140).

(a) Upon request, the following services are available upon the payment of the fees hereinafter prescribed:

(1) Copying records/documents.

(2) Certification of copies of documents.

(3) Records search.

(b) Fees shall also be assessed for the following services provided by the Commission:

(1) Subscriptions to Commission publications.

(2) Placing one's name, as an interested party, on the mailing list of a docketed proceeding.

(3) Processing nonattorney applications to practice before the Commission.

§ 503.42 Payment of fees and charges.

The fees charged for special services may be paid through the mail by check, draft, or postal money order, payable to the Federal Maritime Commission, except for charges for transcripts of hearings. Transcripts of hearings, testimony and oral argument are furnished by a nongovernmental contractor, and may be purchased directly from the reporting firm.

§ 503.43 Fees for services.

The basic fees set forth below provide for documents to be mailed with postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(a) Photo-copying of records and documents performed by requesting party will be available at the rate of five cents per page (one side), limited to size 8½" x 14" or smaller.

(b) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $5 for each such certification.

(c) To the extent that time can be made available, records and information search and/or copying will be performed by Commission personnel for reimbursement at the following rates. Any such charges are in addition to a five cent per page charge for copies provided.

(1) By clerical personnel at a rate of $7 per person per hour.

(2) By professional personnel at an actual hourly cost basis to be established prior to search.

(3) Minimum charge for record and information search, $7.

(4) Minimum charge for copying services performed by Commission personnel, $2.50.

(d) Annual subscriptions to Commission publications for which there are regular mailing lists are available at the charges indicated below for calendar year terms. Subscriptions for periods of less than a full calendar year will be prorated on a quarterly basis. No provision is made for refund upon cancellation of subscription by a purchaser.

(1) Orders, notices, rulings, and decisions (initial and final) issued by Administrative Law Judges and by the Commission in all formal docketed proceedings before the Federal Maritime Commission are available at an annual subscription rate of $195.

(2) Final decisions (only) issued by the Commission in all formal docketed proceedings before the Commission are available at an annual subscription rate of $120.

(3) General rules and regulations of the Commission are available at the following rates: (i) Initial set including all current regulations for a fee of $16.50, and (ii) an annual subscription rate of $8.25 for all amendments to existing regulations and any new regulations issued.

(4) *Exceptions.* No charge will be made by the Commission for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Commission. No charge will be made for single copies of the above Commission publications individually requested in person or by mail. In addition, a subscription to Commission mailing lists will be entered without charge when one of the following conditions is present:

(i) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization.

(ii) The recipient is another governmental agency, Federal, State, or local, concerned with the domestic or foreign commerce by water of the United States or, having a legitimate interest in the proceedings and activities of the Commission.

(iii) The recipient is a college or university.

(iv) The recipient does not fall within paragraphs (d)(4)(i), (d)(4)((ii), or (d)(4)(iii) of this section but is determined by the Commission to be appropriate in the interest of its programs.

(e) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: $3 per proceeding.

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

(g) Loose-leaf reprint of the Commission's complete, current Rules of Practice and Procedure, Part 502 of this chapter, for an initial fee of $4.25. Future amendments to the reprint are available at an annual subscription rate of $4.

(h) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $13 pursuant to § 502.27 of this chapter.

(i) Upon a determination by the Commission that waiver or reduction of the fees prescribed in this section is in the public interest because the information furnished has been determined to be of primary benefit to the general public, such information shall be furnished without charge or at a reduced charge at the discretion of the Commission.

(j) Additional issuances, publications and services of the Commission may be made available for fees to be determined by the Secretary which fees shall not exceed the cost to the Commission for providing them.

Subpart F—Information Security Program

§ 503.51 Definitions.

(a) *"Original Classification"* means an initial determination that information requires protection against unauthorized disclosure in the interest of national security, together with a classification designation signifying the level of protection required.

(b) *"Derivative Classification"* means a determination that information is in substance the same as information currently classified, and the application of the same classification markings.

(c) *"Declassification date or event"* means a date or event upon which classsified information is automatically declassified.

(d) *"Downgrading date or event"* means a date or event upon which classified information is automatically downgraded in accordance with appropriate downgrading instructions on the classified materials.

(e) *"National Security"* means the national defense or foreign relations of the United States.

(f) *"Foreign government information"* means either information provided to the United States by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

§ 503.52 Senior agency official.

The Chairman of the Commission shall designate a senior agency official to be the Security Officer for the Commission who shall be responsible for directing and administering the Commission's information security program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12356.

§ 503.53 Oversight Committee.

An Oversight Committee is established, under the chairmanship of the Security Officer with the following responsibilities:

(a) Establish a Commission security education program to familiarize all personnel who have or may have access to classified information with the provisions of Executive Order 12356, and Information Security Oversight Office Directive No. 1. The program shall include initial, refresher, and termination briefings;

(b) Establish controls to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons;

(c) Act on all suggestions and complaints concerning the Commission's information security program;

(d) Recommend appropriate administrative action to correct abuse or violations of any provision of Executive Order 12356; and

(e) Consider and decide other questions concerning classification and declassification that may be brought before it.

§ 503.54 Original classification.

(a) No Commission Member or employee has the authority to classify any Commission originated information.

(b) If a Commission Member or employee develops information that appears to require classification, or receives any foreign government information as defined in § 503.51(f), the

Member or employee shall immediately notify the Security Officer and appropriately protect the information.

(c) If the Security Officer believes the information warrants classification, it shall be sent to the appropriate agency with original classification authority over the subject matter, or to the Information Security Oversight Office, for review and a classification determination.

(d) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority.

§ 503.55 Derivative classification.

(a) Any document that includes paraphrases, restatements, or summaries of, or incorporates in new form, information that is already classified, shall be assigned the same level of classification as the sources, unless consultation with originators or instructions contained in authorized classification guides indicate that no classification, or a lower classification than originally assigned, should be used.

(b) Persons who apply derivative classification markings shall:

(1) Observe and respect original classification decisions, and

(2) Carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

(c) A derivative document that derives its classification from the approved use of the classification guide of another agency shall bear the declassification date required by the provisions of that classification guide.

(d) Documents classified derivatively on the basis of source documents or classification guides shall bear all applicable markings prescribed in Sections 2001.5(a) through 2001.5(e), Information Security Oversight Office Directive No. 1.

(1) *Classification authority.* The authority for classification shall be shown as follows:

(i) *"Classified by (description of source documents or classification guide)", or*

(ii) *"Classified by Multiple Sources"*, if a document is classified on the basis of more than one source document or classification guide.

(iii) In these cases, the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked "Classified by Multiple Sources" shall cite the source document in its "Classified by" line rather than the term "Multiple sources."

(2) *Declassification and downgrading instructions.* Date or events for automatic declassification or downgrading, or the notation "Originating Agency's Determination Required" to indicate that the document is not to be declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on "declassify on" line as follows:

"Declassify on: (date, description of event); or
"Originating Agency's Determination Required (OADR)."

§ 503.56 General declassification policy.

(a) The Commission exercises declassification and downgrading authority in accordance with Section 3.1 of Executive Order 12356, only over that information originally classified by the Commission under previous Executive Orders. Declassification and downgrading authority may be exercised by the Commission Chairman and the Commission Security Officer, and such others as the Chairman may designate. Commission personnel may not declassify information originally classified by other agencies.

(b) The Commission does not now have original classification authority nor does it have in its possession any documents that it originally classified when it had such authority. The Commission has authorized the Archivist of the United States to automatically declassify information originally classified by the Commission and under its exclusive and final declassification jurisdiction at the end of 20 years from the date of original classification.

§ 503.57 Mandatory review for declassification.

(a) Information originally classified by the Commission shall be subject to a review for declassification by the Commission, if:

(1) A request is made by a United States citizen or permanent resident alien, a federal agency, or a state or local government; and

(2) A request describes the documents or material containing the information with sufficient specificity to enable the Commission to locate it with a reasonable amount of effort. Requests with insufficient description of the material will be returned to the requester for further information.

(b) Requests for mandatory declassification reviews of documents originally classified by the Commission shall be in writing, and shall be sent to the Security Officer, Federal Maritime Commission, Washington, D.C. 20573.

(c) If the request requires the provision of services by the Commission, fair and equitable fees may be charged under Title 5 of the Independent Offices Appropriation Act, 65 Stat. 290, 31 U.S.C 483a.

(d) Requests for mandatory declassification reviews shall be acknowledged by the Commission within 15 days of the date of receipt of such requests.

(e) If the document was originally classified by the Commission, the Commission Security Officer shall forward the request to the Chairman of the Commission for a determination of whether the document should be declassified.

(f) If the document was derivatively classified by the Commission or originally classified by another agency, the request, the document, and a recommendation for action shall be forwarded to the agency with the original classification authority. The Commission may, after consultation with the originating agency, inform the requester of the referral.

(g) If a document is declassified in its entirety, it may be released to the requester, unless withholding is otherwise warranted under applicable law. If a document or any part of it is not declassified, the Security Officer shall furnish the declassified portions to the requester unless withholding is otherwise warranted under applicable law, along with a brief statement concerning the reasons for the denial of the remainder, and the right to appeal that decision to the Commission within 60 days.

(h) If a declassification determination cannot be made within 45 days, the requester shall be advised that additional time is needed to process the request. Final determination shall be made within one year from the date of receipt unless there are unusual circumstances.

(i) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of Executive Order 12356, the Commission shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its

existence or non-existence is itself classifiable under Executive Order 12356.

§ 503.58 Appeals of denials of mandatory declassification review requests.

(a) Within 60 days after the receipt of denial of a request for mandatory declassification reveiw, the requester may submit an appeal in writing to the Commission through the Secretary, Federal Maritime Commission, Washington, D.C. 20573. The appeal shall:

(1) Identify the document in the same manner in which it was identified in the original request;

(2) Indicate the dates of the request and denial, and the expressed basis for the denial; and

(3) State briefly why the document should be declassified.

(b) The Commission shall rule on the appeal within 30 days of receiving it. If additional time is required to make a determination, the Commission shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The Commission shall notify the requester in writing of the final determination and the reasons for any denial.

(c) A determination by the Commission under paragraph (b) of this section is final and no further administrative appeal will be permitted. However, the requester may be informed that suggestions and complaints concerning the information security program prescribed by Executive Order 12356 may be submitted to the Director, Information Security Oversight Officer, GSA(AT), Washington, D.C. 20540.

§ 503.59 Safeguarding classified information.

(a) All classified information shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification.

(b) Whenever classified material is removed from a storage facility, such material shall not be left unattended and shall be protected by attaching an appropriate classified document cover sheet to each classified document.

(c) Classified information being transmitted from one Commission office to another shall be protected with a classified document cover sheet and hand delivered by an appropriately cleared person to another appropriately cleared person.

(d) Classified information shall be made available to a person only when the possessor of the Classified information has determined that the person seeking the classified information has a valid security clearance at least commensurate with the level of classification of the information and has established that access is essential to the accomplishment of authorized and lawful Government purposes.

(e) The requirement in paragraph (d) of this section, that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes, may be waived as provided in paragraph (f) of this section for persons who:

(1) Are engaged in historical research projects, or

(2) Previously have occupied policy-making positions to which they were appointed by the President.

(f) Waivers under paragraph (e) of this section may be granted when the Commission Security Officer:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from authorized disclosure or compromise, and ensures that the information is properly safeguarded; and

(3) Limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

(g) Persons seeking access to classified information in accordance with paragraphs (e) and (f) of this section must agree in writing:

(1) To be subject to a national security check;

(2) To protect the classified information in accordance with the provisions of Executive Order 12356; and

(3) Not to publish or otherwise reveal to unauthorized persons any classified information.

(h) Except as provided by directives issued by the President through the National Security Council, classified information that originated in another agency may not be disseminated outside the Commission.

(i) Only appropriately cleared personnel may receive, transmit, and maintain current access and accountability records for classified material.

(j) Each office which has custody of classified material shall maintain:

(1) A classified document register or log containing a listing of all classified holdings, and

(2) A classified document destruction register or log containing the title and date of all classified documents that have been destroyed.

(k) An inventory of all documents classified higher than confidential shall be made at least annually and whenever there is a change in classified document custodians. The Commission Security Office shall be notified, in writing, of the results of each inventory.

(l) Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

(m) Combinations to dial-type locks shall be changed only by persons having an appropriate security clearance, and shall be changed whenever such equipment is placed in use; whenever a person knowing the combination no longer requires access to the combination; whenever a combination has been subject to possible compromise; whenever the equipment is taken out of service; and at least once each year. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned. One copy of the record of each combination shall be provided to the Commission Security Officer.

(n) Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to insure adherence to procedural safeguards prescribed to protect classified information. The Commission Security Officer shall conduct periodic inspections to determine if the procedural safeguards prescribed in this subpart are in effect at all times.

(o) Whenever classified material is to be transmitted outside the Commission, the custodian of the classified material shall contact the Commission Security Officer for preparation and receipting instructions. If the material is to be hand carried, the Security Officer shall ensure that the person who will carry the material has the appropriate security clearance, is knowledgeable of safeguarding requirements, and is briefed, if appropriate, concerning restrictions with respect to carrying classified material on commercial carriers.

(p) Any person having access to and possession of classified information is responsible for protecting it from persons not authorized access to it, to include securing it in approved equipment or facilities, whenever it is not under the direct supervision of authorized persons.

(q) Employees of the Commission shall be subject to appropriate sanctions, which may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other

sanctions in accordance with applicable law and agency regulation, if they:

(1) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under Executive Order 12356 or predecessor orders;

(2) Knowingly and willfully classify or continue the classification of information in violation of Executive Order 12356 or any implementing directive; or

(3) Knowingly and willfully violate any other provision of Executive Order 12356 or implementing directive.

(r) Any person who discovers or believes that a classified document is lost or compromised shall immediately report the circumstances to his or her supervisor and the Commission Security Officer, who shall conduct an immediate inquiry into the matter.

(s) Questions with respect to the Commission Information Security Program, particularly those concerning the classification, declassification, downgrading, and safeguarding of classified information, shall be directed to the Commission Security Officer.

Subpart G—Access to Any Record of Indentifiable Personal Information

§ 503.60 Definitions.

For the purpose of this subpart:

(a) *"Agency"* means each authority of the government of the United States as defined in 5 U.S.C. 551(1) and shall include any executive department, military department, government corporation, government controlled corporation or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(b) *"Commission"* means the Federal Maritime Commission.

(c) *"Individual"* means a citizen of the United States or an alien lawfully admitted for permanent residence to whom a record pertains.

(d) *"Maintain"* includes maintain, collect, use, or disseminate.

(e) *"Person"* means any person not an individual and shall include, but is not limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(f) *"Record"* means any item, collection, or grouping of information about an individual that is maintained by the Federal Maritime Commission, including but not limited to a person's education, financial transactions, medical history, and criminal or employment history, and that contains the person's name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(g) *"Routine use"* means [with respect to the disclosure of a record], the use of such records for a purpose which is compatible with the purpose for which it was collected.

(h) *"Statistical record"* means a record in a system of records, maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an indentifiable individual, but shall not include matter pertaining to the Census as defined in 13 U.S.C 8.

(i) *"System of records"* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

§ 503.61 Conditions of disclosure.

(a) Subject to the conditions of paragraphs (b) and (c) of this section, the Commission shall not disclose any record which is contained in a system of records, by any means of communication, to any person or other agency who is not an individual to whom the record pertains.

(b) Upon written request or with prior written consent of the individual to whom the record pertains, the Commission may disclose any such record to any person or other agency.

(c) In the absence of a written consent from the individual to whom the record pertains, the Commission may disclose any such record, provided such disclosure is:

(1) To those offices and employees of the Commission who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C 552);

(3) For a routine use;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Commission with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States, as a record which has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Secretary of the Commission specifying the particular record and the law enforcement activity for which it is sought;

(8) To either House of Congress, and to the extent of a matter within its jurisdiction, any committee, subcommittee, or joint committee of Congress;

(9) To the Comptroller General, or any authorized representative, thereof, in the course of the performance of the duties of the GAO; or

(10) Under an order of a court of competent jurisdiction.

§ 503.62 Accounting of disclosures.

(a) The Secretary shall make an accounting of each disclosure of any record contained in a system of records in accordance with 5 U.S.C. 552a(c)(1) and 552a(c)(2).

(b) Except for a disclosure made under § 503.61(c)(7), the Secretary shall make the accounting described in paragraph (a) of this section available to any individual upon written request made in accordance with § 503.63(b) or § 503.63(c).

(c) The Secretary shall make reasonable efforts to notify the individual when any record which pertains to such individual is disclosed to any person under compulsory legal process, when such process becomes a matter of public record.

§ 503.63 Request for information.

(a) Upon request, in person or by mail, made in accordance with the provisions of paragraph (b) or (c) of the section, any individual shall be informed whether or not any Commission system or records contains a record pertaining to him or her.

(b) Any individual requesting such information in person shall personally appear at the Office of the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 and shall:

(1) Provide information sufficient, in the opinion of the Secretary, to identify the record, e.g., the individual's own name, date of birth, place of birth, etc.;

(2) Provide identification acceptable to the Secretary to verify the individual's identity, e.g., driver's license, employee identification card or medicare card;

(3) Complete and sign the appropriate form provided by the Secretary.

(c) Any individual requesting such information by mail shall address such request to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 and shall include in such request the following:

(1) Information sufficient in the opinion of the Secretary to identify the record, e.g., the individual's own name, date of birth, place of birth, etc.;

(2) A signed notarized statement to verify his or her identity.

§ 503.64 Commission procedure on request for information.

Upon request for information made in accordance with § 503.63, the Secretary or his or her delegate shall, within 10 days (excluding Saturdays, Sundays, and legal public holidays), furnish in writing to the requesting party notice of the existence or nonexistence of any records described in such request.

§ 503.65 Request for access to records.

(a) *General.* Upon request by any individual made in accordance with the procedures set forth in paragraph (b) of this section, such individual shall be granted access to any record pertaining to him or her which is contained in a Commission system of records. However, nothing in this section shall allow an individual access to any information compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding.

(b) *Procedures for requests for access to records.* Any individual may request access to a record pertaining to him or her in person or by mail in accordance with paragraphs (b)(1) and (b)(2) of this section:

(1) Any individual making such request in person shall do so at the Office of the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 and shall:

(i) Provide identification acceptable to the Secretary to verify the individual's identity, e.g., driver's license, employee identification card, or medicare card; and

(ii) Complete and sign the appropriate form provided by the Secretary.

(2) Any individual making a request for access to records by mail shall address such request to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, and shall include therein a signed notarized statement to verify his or her identity.

(3) Any individual requesting access to records under this section in person may be accompanied by a person of his or her own choosing, while reviewing the record requested.

If an individual elects to be so accompanied, he or she shall notify the Secretary of such election in the request and shall provide a written statement authorizing disclosure of the record in the presence of the acompanying person. Failure to so notify the Secretary in a request for access shall be deemed to be a decision by the individual not to be accompanied.

(c) *Commission determination of requests for access.* (1) Upon request made in accordance with this section, the Secretary or his or her delegate shall:

(i) Determine whether or not such request shall be granted;

(ii) Make such determination and provide notification within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such request, and, if such request is granted shall;

(iii) Notify the individual that fees for reproducing copies will be make in accordance with § 503.69.

(2) If access to a record is denied because such information has been compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding, or for any other reason, the Secretary shall notify the individual of such determination and his or her right to judicial appeal under 5 U.S.C. 552a(g).

(d) *Manner of providing access.* (1) If access is granted, the individual making such request shall notify the Secretary whether the records requested are to be copied and mailed to the individual.

(2) If records are to be made available for personal inspection, the individual shall arrange with the Secretary a mutually agreeable time and place for inspection of the record.

(3) Fees for reproducing and mailing copies of records will be made in accordance with § 503.69.

§ 503.66 Amendment of a record.

(a) *General.* Any individual may request amendment of a record pertaining to him or her according to the procedure in paragraph (b) of this section.

(b) *Procedures for request amendment of a record.* After inspection of a record pertaining to him or her, an individual may file with the Secretary a request, in person or by mail, for amendment of a record. Such request shall specify the particular portions of the record to be amended, the desired amendments and the reasons therefor.

(c) *Commission procedures on request for amendment of a record.* (1) Not later than ten (10) days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of a request made in accordance with this section to amend a record in whole or in part, the Secretary or his or her delegate shall:

(i) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or

(ii) Inform the individual, by certified mail, return receipt requested, of refusal to amend the record, setting out the reasons therefor, and notify the individual of his or her right to appeal that determination to the Chairman of the Commission under § 503.67.

(2) The Secretary shall inform any person or other agency to whom a record has been disclosed of any correction or notation of dispute made by the Secretary with respect to such records, in accordance with 5 U.S.C. 552a(c)(4) referring to amendment of a record, if an accounting of such disclosure has been made.

§ 503.67 Appeals from denial of request for amendment of a record.

(a) *General.* An individual whose request for amendment of a record pertaining to him or her is denied, may further request a review of such determination in accordance with paragraph (b) of this section.

(b) *Procedure for appeal.* Not later than thirty (30) days (excluding Saturdays, Sundays, and legal public holidays) following receipt of notification of refusal to amend, an individual may file an appeal to amend the record. Such appeal shall:

(1) Be addressed to the Chairman, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573; and

(2) Specify the reasons for which the refusal to amend is challenged.

(c) *Commission procedure on appeal.* (1) Upon appeal from a denial to amend a record, the Chairman of the Commission or the officer designated by the Chairman to act in his or her absence, shall make a determination whether or not to amend the record and shall notify the individual of that determination by certified mail, return receipt requested, not later than thirty (30) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such appeal, unless extended pursuant to paragraph (d) of this section.

(2) The Chairman shall also notify the individual of the provisions of 5 U.S.C. 552a(g)(1)(A) regarding judicial review of the Chairman's determination.

(3) If, on appeal, the refusal to amend the record is upheld, the Commission shall permit the individual to file a statement setting forth the reasons for disagreement with the Commission's determination.

(d) The Chairman, or his or her delegate in his or her absence, may extend up to thirty (30) days the time period prescribed in paragraph (c)(1) of this section within which to make a determination on an appeal from refusal to amend a record for the reasons that a fair and equitable review cannot be completed within the prescribed time period.

§ 503.68 Exemptions.

The Chairman of the Commission reserves the right to promulgate rules in accordance with the requirements of 5 U.S.C. 553(b) (1), (2) and (3), 553(c) and 553(e) (Administrative Procedure Act—Rulemaking), to exempt any system of records maintained by the Commission in accordance with the provisions of 5 U.S.C. 552a(k).

§ 503.69 Fees.

(a) *General.* The following Commission services are available, with respect to requests made under the provisions of this subpart, for which fees will be charged as provided in paragraph (b) and (c) of this section:

(1) Copying records/documents.

(2) Certification of copies of documents.

(b) *Fees for services.* The fees set forth below provide for documents to be mailed with ordinary first-class postage prepaid. If a copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(1) The copying of records and documents will be available at the rate of 30 cents per page (one side), limited to size 8¼" x 14" or smaller.

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $5 for each certification.

(c) *Payment of fees and charges.* The fees charged for special services may be paid by check, draft, or postal money order, payable to the Federal Maritime Commission.

Subpart H—Public Observation of Federal Maritime Commission Meetings and Public Access to Information Pertaining to Commission Meetings

§ 503.70 Policy.

It is the policy of the Federal Maritime Commission, under the Provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b, September 13, 1976) to entitle the public to the fullest practicable information regarding the decisional processes of the Commission. The provisions of this Subpart set forth the procedural requirements designed to provide the public with such information while continuing to protect the rights of individuals and to maintain the capabilities of the Commission in carrying out its responsibilities under the shipping statutes administered by this Commission.

§ 503.71 Definitions.

The following definitions apply for purposes of this subpart:

(a) *"Agency"* means the Federal Maritime Commission;

(b) *"Information pertaining to a meeting"* means, but is not limited to the following: the record of any agency vote taken under the provisions of this subpart, and the record of the vote of each member; a full written explanation of any agency action to close any portion of any meeting under this Subpart; lists of persons expected to attend any meeting of the agency and their affiliation; public announcement by the agency under this subpart of the time, place, and subject matter of any meeting or portion of any meeting; announcement of whether any meeting or portion of any meeting shall be open to public observation or be closed; any announcement of any change regarding any meeting or portion of any meeting; and the name and telephone number of the Secretary of the agency who shall be designated by the agency to respond to requests for information concerning any meeting or portion of any meeting;

(c) *"Meeting"* means the deliberations of at least three of the members of the agency which determine or result in the joint conduct of disposition of official agency business, but does not include: (1) Individual member's consideration of official agency business circulated to the members in writing for disposition on notation; (2) deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in §§ 503.74 and 503.75; (3) deliberations by the agency in determining whether or not to withhold from disclosure information pertaining to a portion or portions of a meeting or series of meetings as provided in § 503.80; or (4) deliberations pertaining to any change in any meeting or to changes in the public announcement of such a meeting as provided in § 503.83;

(d) *"Member"* means each individual Commissioner of the agency;

(e) *"Person"* means any individual, partnership, corporation, association, or public or private organization, other than an agency as defined in 5 U.S.C. 551(1));

(f) *"Series of meetings"* means more than one meeting involving the same particular matters and scheduled to be held no more than thirty (30) days after the initial meeting in such series.

§ 503.72 General rule—meetings.

(a) Except as otherwise provided in §§ 503.73, 503.74, 503.75 and 503.76, every portion of every meeting and every portion of a series of meetings of the agency shall be open to public observation.

(b) The opening of a portion or portions of a meeting or a portion or portions of a series of meetings to public observation shall not be construed to include any participation by the public in any manner in the meeting. Such an attempted participation or participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the agency.

§ 503.73 Exception—meetings.

Except in a case where the agency finds that the public interest requires otherwise, the provisions of § 503.72(a) shall not apply to any portion or portions of an agency meeting or portion or portions of a series of meetings where the agency determined under the provisions of § 503.74 or § 503.75 that such portion or portions of such meeting or series of meetings is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive Order;

(b) Relate solely to the internal personnel rules and practices of any agency;

(c) Disclose matters specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (1) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 503.74 Procedures for closing a portion or portions of a meeting or a portion or portions of a series of meetings on agency initiated requests.

(a) Any member of the agency or the General Counsel of the agency may request that any portion or portions of a series of meetings be closed to public observation for any of the reasons provided in § 503.73 by submitting such request in writing to the Secretary of the agency in sufficient time to allow the Secretary to schedule a timely vote on the request pursuant to paragraph (b) of this section.

(b) Upon receipt of any request made under paragraph (a) of this section, the Secretary of the agency shall schedule a time at which the members of the agency shall vote upon the request, which vote shall take place not later then eight (8) days prior to the scheduled meeting of the agency.

(c) At the time the Secretary schedules a time for an agency vote as described in paragraph (b) of this section, he or she shall forward the request to the General Counsel of the agency who shall act upon such request as provided in § 503.77.

(d) At the time scheduled by the Secretary as provided in paragraph (b) of this section, the members of the agency, upon consideration of the request submitted under paragraph (a) of this section and consideration of the certified opinion of the General Counsel of the agency provided to the members under § 503.77, shall vote upon that request. That vote shall determine whether or not any portion or portions of a meeting may be closed to public observation for any of the reasons provided in § 503.73, and whether or not the public interest requires that the portion or portions of the meeting or meetings remain open, notwithstanding the applicability of any of the reasons provided in § 503.73 permitting the closing of any meeting to public observation.

(e) In the case of a vote on a request under this section to close to public observation a portion or portions of a meeting, no such portion or portions of any meeting may be closed unless, by a vote on the issues described in paragraph (d) of this section, a majority of the entire membership of the agency shall vote to close such portion or portions of a meeting by recorded vote.

(f) In the case of a vote on a request under this section to close to public observation a portion or portions of a series of meetings as defined in § 503.71, no such portion or portions of a series of meetings may be closed unless, by a vote on the issues described in paragraph (d) of this section, a majority of the entire membership of the agency shall vote to close such portion or portions of a series of meetings. A determination to close to public observation a portion or portions of a series of meetings may be accomplished by a single vote on each of the issues described in paragraph (d) of this section, provided that the vote of each member of the agency shall be recorded and the vote shall be cast by each member and not by proxy vote.

§ 503.75 Procedures for closing a portion of a meeting on request initiated by an interested person.

(a) Any person as defined in § 503.71, whose interests may be directly affected by a portion of a meeting of the agency, may request that the agency close that portion of a meeting for the reason that matters in deliberation at that portion of the meeting are such that public disclosure of that portion of a meeting is likely to:

(1) Involve accusing any person of a crime, or formally censuring any person;

(2) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy; or

(3) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the exent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(b) Any person described in paragraph (a) of this section who submits a request that a portion of a meeting be closed shall submit an original and 15 copies of that request to the Secretary, Federal Maritime Commission, Washington, D.C 20573, and shall state with particularity that portion of a meeting sought to be closed and the reasons therefor as described in paragraph (a) of this section.

(c) Upon receipt of any request made under paragraphs (a) and (b) of this section, the Secretary of the agency shall:

(1) Furnish a copy of the request to each member of the agency; and

(2) Furnish a copy of the request to the General Counsel of the agency.

(d) Upon receipt of a request made under paragraphs (a) and (b) of this section, any member of the agency may request agency action upon the request to close a portion of a meeting by notifying the Secretary of the agency of that request for agency action.

(e) Upon receipt of a request for agency action under paragraph (d) of this section, the Secretary of the agency shall schedule a time for an agency vote upon the request of the person whose interests may be directly affected by a portion of a meeting, which vote shall take place prior to the scheduled meeting of the agency.

(f) At the time the Secretary receives a request for agency action and schedules a time for an agency vote as described in paragraph (e) of this section, the request of the person whose interests may be directly affected by a portion of a meeting shall be forwarded to the General Counsel of the agency who shall act upon such request as provided in § 503.77.

(g) At the time scheduled by the Secretary, as provided in paragraph (e) of this section, the members of the agency, upon consideration of the request of the person whose interests may be directly affected by a portion of a meeting submitted under paragraphs (a) and (b) of this section, and consideration of the certified opinion of the General Counsel of the agency provided to the members under § 503.77, shall vote upon that request. That vote shall determine whether or not any portion or portions of a meeting or portion or portions of a series of meetings may be closed to public observation for any of the reasons provided in paragraph (a) of this section, and whether or not the public interest requires that the portion or portions of the meeting or meetings remain open, notwithstanding the applicability of any of the reasons provided in paragraph (a) of this section permitting the closing of any portion of any meeting to public observation.

(h) In the case of a vote on a request under this section to close to public observation a portion of a meeting, such portion of a meeting may be closed unless, by a vote on the issues described in paragraph (g) of this section, a majority of the entire membership of the agency shall vote to close such portion of a meeting by a recorded vote.

§ 503.76 Effect of vote to close a portion or portions of a meeting or series of meetings.

(a) Where the agency votes as provided in § 503.74 or § 503.75, to close to public observation a portion or portions of a meeting or a portion or portions of a series of meetings, the portion or portions of a meeting or the portion or portions of a series of meetings shall be closed.

(b) Except as otherwise provided in §§ 503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under § 503.74 or § 503.75, by which it is determined to close a portion or portions of a meeting or a portion or portions of a series of meetings to public observation, the Secretary shall make available to the public:

(1) A written copy of the recorded vote reflecting the vote of each member of the agency;

(2) A full written explanation of the agency action closing that portion or those portions to public observation; and

(3) A list of the names and affiliations of all persons expected to attend the portion or portions of the meeting or the portion or portions of a series of meetings.

(c) Except as otherwise provided in §§ 503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under § 503.74, or § 503.75, by which it is determined that the portion or portions of a meeting or the portion or portions of a series of meetings shall remain open to public observation, the Secretary shall make available to the public a written copy of the recorded vote reflecting the vote of each member of the agency.

§ 503.77 Responsibilities of the General Counsel of the agency upon a request to close any portion of any meeting.

(a) Upon any request that the agency close a portion or portions of any meeting or any portion or portions of any series of meetings under the provisions of §§ 503.74 and 503.75, the General Counsel of the agency shall certify in writing to the agency, prior to an agency vote on that request, whether or not in his or her opinion the closing of any such portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b). If, in the opinion of the General Counsel, the closing of a portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b), his or her certification of that opinion shall cite each applicable, particular, exemptive provision of that Act and provision of this subpart.

(b) A copy of the certification of the General Counsel as described in paragraph (a) of this section, together with a statement of the officer presiding over the portion or portions of any meeting or the portion or portions of a series of meetings setting forth the time and place of the relevant meeting or meetings, and the persons present, shall be maintained by the Secretary for public inspection.

§ 503.78 General rule—information pertaining to meeting.

(a) As defined in § 503.71, all information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings of the agency shall be disclosed to the public unless excepted from such disclosure under §§ 503.79, 503.80 and 503.81.

(b) All inquiries as to the status of pending matters which were considered by the Commission in closed session should be directed to the Secretary of the Commission. Commission personnel who attend closed meetings of the Commission are prohibited from disclosing anything that occurs during those meetings. An employee's failure to respect the confidentiality of closed meetings constitutes a violation of Commission's General Standards of Conduct. The Commission can, of course, determine to make public the events or decisions occurring in a closed meeting, such information to be disseminated by the Office of the Secretary. An inquiry to the Office of the Secretary as to whether any information has been made public is not, therefore, improper. However, a request of or attempt to persuade a Commission employee to divulge the contents of a closed meeting constitutes a lack of proper professional conduct inappropriate to a person practicing before this agency, and requires that the employee file a report of such event so that a determination can be made whether disciplinary action should be initiated pursuant to § 502.30 of this chapter.

§ 503.79 Exceptions—information pertaining to meeting.

Except in a case where the agency finds that the public interest requires otherwise, information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings need not be disclosed by the agency if the agency determines, under the provisions of §§ 503.80 and 503.81 that disclosure of that information is likely to disclose matters which are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and

(2) in fact properly classified pursuant to such Executive Order;

(b) Related solely to the internal personnel rules and practices of an agency;

(c) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information, obtained from a person and privileged or confidential;

(e) Involved with accusing any person of a crime, or formally censuring any person;

(f) Of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory records compiled for law enforcement purposes, or information which is written would be contained in such records, but only to the extent that the production of such record or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concerned with the agency's issuance of a subpena, the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency or a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 503.80 Procedures for withholding information pertaining to meeting.

(a) Any member of the agency, or the General Counsel of the agency may request that information pertaining to a portion or portions of a meeting or to a portion or portions of a series of meetings be withheld from public disclosure for any of the reasons set forth in § 503.79 by submitting such request in writing to the Secretary not later than two (2) weeks prior to the commencement of the first meeting in a series of meetings.

(b) Upon receipt of any request made under paragraph (b) of this section, the Secretary shall schedule a time at which the members of the agency shall vote upon the request, which vote shall take place not later than eight (8) days prior to the scheduled meeting of the agency.

(c) At the time scheduled by the Secretary in paragraph (b) of this section, the Members of the agency, upon consideration of the request submitted under paragraph (a) of this section, shall vote upon that request. That vote shall determine whether or not information pertaining to a meeting may be withheld from public disclosure for any of the reasons provided in § 503.79, and whether or not the public interest requires that the information be disclosed notwithstanding the applicability of the reasons provided in § 503.79 permitting the withholding from public disclosure of the information pertaining to a meeting.

(d) In the case of a vote on a request under this section to withhold from public disclosure information pertaining to a portion or portions of a meeting, no such information shall be withheld from public disclosure unless, by a vote on the issues described in paragraph (c) of this section, a majority of the entire membership of the agency shall vote to withhold such information by recorded vote.

(e) In the case of a vote on a request under this section to withhold information pertaining to a portion or portions of a series of meetings, no such information shall be withheld unless, by a vote on the issues described in paragraph (c) of this section, a majority of the entire membership of the agency shall vote to withhold such information. A determination to withhold information pertaining to a portion or portions of a series of meetings from public disclosure may be accomplished by a single vote on the issues described in paragraph (c) of this section, provided that the vote of each member of the agency shall be recorded and the vote shall be cast by each member and not by proxy vote.

§ 503.81 Effect to vote to withhold information pertaining to meeting.

(a) Where the agency votes as provided in § 503.80 to withhold from public disclosure information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings, such information shall be excepted from the requirements of §§ 503.78, 503.82 and 503.83.

(b) Where the agency votes as provided in § 503.80 to permit public disclosure of information pertaining to a portion of portions of a meeting or portion or portions of a series of meetings, such information shall be disclosed to the public as required by §§ 503.78, 503.82 and 503.83.

(c) Not later than the day following the date on which a vote is taken under § 503.80, by which the information pertaining to a meeting is determined to be disclosed, the Secretary shall make available to the public a written copy of such vote reflecting the vote of each member of the agency on the question.

§ 503.82 Public announcement of agency meeting.

(a) Except as provided in §§ 503,80 and 503.81 regarding a determination to withhold from public disclosure any information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings, or as otherwise provided in paragraph (c) of this section, the Secretary of the agency shall make public announcement of each meeting of the agency.

(b) Except as otherwise provided in this section, public announcement of each meeting of the agency shall be accomplished not later than one week prior to commencement of a meeting or the commencement of the first meeting in a series of meetings, and shall disclose:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of a meeting or portion or portions of any series of meetings shall be open or closed to public observation; and

(5) The name and telephone number of the Secretary of the agency who shall respond to requests for information about a meeting.

(c) The announcement described in paragraphs (a) and (b) of this section

may be accomplished less than one week prior to the commencement of any meeting or series of meetings, provided the agency determines by recorded vote that the agency business requires that any such meeting or series of meetings be held at an earlier date. In the event of such a determination by the agency, public announcement as described in paragraph (b) of this section shall be accomplished at the earliest practicable time.

(d) Immediately following any public announcement accomplished under the provisions of this section, the Secretary of the agency shall submit a notice for publication in the Federal Register disclosing:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of a meeting or portion or portions of any series of meetings is open or closed to public observation; and

(5) The name and telephone number of the Secretary of the agency who shall respond to requests for information about any meeting.

§ 503.83 Public announcement of changes in meeting.

(a) Except as provided in §§ 503.80 and 503.81, under the provisions of paragraphs (b) and (c) of this section, the time or place of a meeting or series of meetings may be changed by the agency following accomplishment of the announcement and notice required by § 503.82, provided the Secretary of the agency shall publicly announce such change at the earliest practicable time.

(b) The subject matter of a portion or portions of a meeting or a portion or portions of a series of meetings, the time and place of such meeting, and the determination that the portion or portions of a series of meetings shall be open or closed to public observation may be changed following accomplishment of the announcement required by § 503.82, provided:

(1) The agency, by recorded vote of the majority of the entire membership of the agency, determines that agency business so requires and that no earlier announcement of the change was possible; and

(2) The Secretary of the agency publicly announces, at the earliest practicable time, the change made and the vote of each member upon such change.

(c) Immediately following any public announcement of any change accomplished under the provisions of this section, the Secretary of the agency shall submit a notice for publication in the Federal Register disclosing:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of any meeting or any portion or portions of any series of meetings is open or closed to public observation;

(5) Any change in paragraphs (c) (1), (c) (2), (c) (3), or (c) (4) of this section; and

(6) The name and telephone number of the Secretary of the agency who shall respond to requests for information about any meeting.

§ 503.84 [Reserved]

§ 503.85 Agency recordkeeping requirements.

(a) In the case of any portion or portions of a meeting or portion or portions of a series of meetings determined by the agency to be closed to public observation under the provisions of this subpart, the following records shall be maintained by the Secretary of the agency:

(1) The certification of the General Counsel of the agency required by § 503.77;

(2) A statement from the officer presiding over the portion or portions of the meeting or portion or portions of a series of meetings setting forth the time and place of the portion or portions of the meeting or portion or portions of the series of meetings, the persons present at those times; and

(3) Except as provided in paragraph (b) of this section, a complete transcript or electronic recording fully recording the proceedings at each portion of each meeting closed to public observation.

(b) In case the agency determines to close to public observation any portion or portions of any meeting or portion or portions of any series of meetings because public observation of such portion or portions of any meeting is likely to specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing, the agency may maintain a set of minutes in lieu of the transcript of recording described in paragraph (a)(3) of this section. Such minutes shall contain:

(1) A full and clear description of all matters discussed in the closed portion of any meeting;

(2) A full and accurate summary of any action taken on any matter discussed in the closed portion of any meeting and the reasons therefor;

(3) A description of each of the views expressed on any matter upon which action was taken as described in paragraph (b)(2) of this section;

(4) The record of any rollcall vote which shall show the vote of each member on the question; and

(5) An identification of all documents considered in connection with any action taken on a matter described in paragraph (b)(1) of this section.

(c) All records maintained by the agency as described in this section shall be held by the agency for a period of not less than two (2) years following any meeting or not less than one (1) year following the conclusion of any agency proceeding with respect to which that meeting or portion of a meeting was held.

§ 503.86 Public access to records.

(a) All transcripts, electronic recordings or minutes required to be maintained by the agency under the provisions of §§ 503.85(a)(3) and 503.85(b) shall be promptly made available to the public by the Secretary of the agency, except for any item of discussion or testimony of any witnesses which the agency determines to contain information which may be withheld from public disclosure because its disclosure is likely to disclose matters which are:

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

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involved with accusing any person of a crime, or formally censuring any person;

(6) Of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concerned with the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Requests for access to the records described in this section shall be made in accordance with procedures described in §§ 503.31 through 503.36.

(c) Records disclosed to the public under this section shall be furnished at the expense of the party requesting such access at the actual cost of duplication of transcription.

§ 503.87 Effect of provisions of this subpart on another subpart.

(a) Nothing in this subpart shall limit or expand the ability of any person to seek access to agency records under Subpart D (§§ 503.31 to 503.36) of this part except that the exceptions of § 503.86 shall govern requests to copy or inspect any portion of any transcript, electronic recordings or minutes required to be kept under this subpart.

(b) Nothing in this subpart shall permit the withholding from any individual to whom a record pertains any record required by this subpart to be maintained by the agency which record is otherwise available to such an individual under the provisions of Subpart G of this part.

Note.—This part does not contain any collection of information requests or requirements within the meaning of the Paperwork Reduction Act of 1980, Pub. L. 96–511.

PART 504—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

Sec.
504.1 Purpose and scope.
504.2 Definitions.
504.3 General information.
504.4 Categorical exclusions.
504.5 Environmental assessments.
504.6 Finding of no significant impact.
504.7 Environmental impact statements.
504.8 Record of decision.
504.9 Information required by the Commission.
504.10 Time constraints on final administrative actions.
504.91 OBM control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 552, 553; Secs. 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820 and 841a); secs. 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712 and 1716); sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(b)) and sec. 382(b) of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6362)

§ 504.1 Purpose and scope.

(a) This part implements the National Environmental Policy Act of 1969 (NEPA) and Executive Order 12114 and incorporates and complies with the Regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500 *et seq.*).

(b) This part applies to all actions of the Federal Maritime Commission (Commission). To the extent possible, the Commission shall integrate the requirements of NEPA with its obligations under section 382(b) of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6362.

(c) Information obtained under this part is used by the Commission to assess potential environmental impacts of proposed Federal Maritime Commission actions. Compliance is voluntary but may be made mandatory by Commission order to produce the information pursuant to section 21 of the Shipping Act, 1916 or section 15 of the Shipping Act of 1984. Penalty for non-compliance with a section 21 order is $100 a day for each day of default; penalty for falsification of such a report is a fine of up to $1,000 or imprisonment up to one year, or both. Penalty for violation of a Commission order under section 15 of the Shipping Act of 1984 may not exceed $5,000 for each violation, unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation. (Each day of a continuing violation constitutes a separate offense).

§ 504.2 Definitions.

(a) *"Shipping Act, 1916"* [46 U.S.C. app. 801–846] means the Shipping Act, 1916 as amended, 46 U.S.C. app. 801 *et seq.*

(b) *"Common carrier"* means any common carrier by water as defined in section 3 of the Shipping Act of 1984 or in the Shipping Act, 1916, including a conference of such carriers.

(c) *"Environmental Impact"* means any alteration of existing environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action under consideration.

(d) *"Potential Action"* means the range of possible Commission actions that may result from a Commission proceeding in which the Commission has not yet formulated a proposal.

(e) *"Proposed Action"* means that stage of activity where the Commission has determined to take a particular course of action and the effects of that course of action can be meaningfully evaluated.

(f) *"Environmental Assessment"* means a concise document that serves to "provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact" (40 CFR 1508.9).

(g) *"Recyclable"* means any secondary material that can be used as a raw material in an industrial process in which it is transformed into a new product replacing the use of a depletable natural resource.

(h) *"Shipping Act of 1984"* means the Shipping Act of 1984, (46 U.S.C. app. 1701–1720).

(i) *"Marine Terminal Operator"* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier.

§ 504.3 General information.

(a) All comments submitted pursuant to this Part shall be addressed to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

(b) A list of Commission actions for which a finding of no significant impact has been made or for which an environmental impact statement is being prepared will be maintained by the Commission in the Office of the Secretary and will be available for public inspection.

(c) Information or status reports on environmental statements and other elements of the NEPA process can be obtained from the Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 (telephone [202] 523–5835.

§ 504.4 Categorical exclusions.

(a) No environmental analyses need be undertaken or environmental documents prepared in connection with actions which do not individually or cumulatively have a significant effect on the quality of the human environment because they are purely ministerial actions or because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. The following Commission actions, and rulemakings related thereto, are therefore excluded:

(1) Issuance, modification, denial and revocation of Ocean Freight Forwarder licenses.

(2) Certification of financial responsibility of passenger vessels pursuant to 46 CFR Part 540;

(3) [Reserved]

(4) Promulgation of procedural rules pursuant to 46 CFR Part 502;

(5) Acceptance or rejection of tariff filings in foreign and domestic commerce;

(6) Consideration of special permission applications filed pursuant to 46 CFR Parts 550 or 580.

(7) Receipt of terminal tariffs pursuant to 46 CFR Part 515.

(8) Suspension of and/or decision to investigate tariff schedules pursuant to section 3 of the Intercoastal Shipping Act, 1933.

(9) Consideration of amendments to agreements filed pursuant to section 15 of the Shipping Act, 1916 or section 5 of the Shipping Act of 1984, which do not increase the authority set forth in the effective agreement.

(10) Consideration of agreements between common carriers which solely affect intraconference or inter-rate agreement relationships or pertain to administrative matters of conferences or rate agreements.

(11) Consideration of agreements between common carriers to discuss, propose or plan future action, the implementation of which requires filing a further agreement.

(12) Consideration of exclusive or non-exclusive equipment interchange of husbanding agreements.

(13) Receipt of non-exclusive transshipment agreements.

(14) Action relating to collective bargaining agreements.

(15) Action pursuant to section 9 of the Shipping Act of 1984 concerning the justness and reasonableness of controlled carriers' rates, charges, classifications, rules or regulations.

(16) Receipt of self-policing reports or shipper requests and complaints.

(17) Consideration of financial reports prepared by common carriers in the domestic offshore trades.

(18) Consideration of actions solely affecting the environment of a foreign country.

(19) Action taken on special docket applications pursuant to 46 CFR 502.92.

(20) Consideration of matters related solely to the issue of Commission jurisdiction.

(21) Investigations conducted pursuant to 46 CFR Part 555.

(22) Investigator and adjudicatory proceedings, the purpose of which is to ascertain past violations of the Shipping Act, 1916 or the Shipping Act of 1984.

(23) [Reserved]

(24) Action regarding access to public information pursuant to 46 CFR Part 503.

(25) Action regarding receipt and retention of minutes of conference meetings.

(26) Administrative procurements (general supplies).

(27) Contracts for personal services.

(28) Personnel actions.

(29) Requests for appropriations.

(30) Consideration of all agreements involving marine terminal facilities and/or services except those requiring substantial levels of construction, dredging, land-fill, energy usage and other activities which may have a significant environmental effect.

(31) Consideration of agreements regulating employee wages, hours of work, working conditions or labor exchanges.

(32) Consideration of general agency agreements involving ministerial duties of a common carrier such as internal management, cargo solicitation, booking of cargo, or preparation of documents.

(33) Consideration of agreements pertaining to credit rules.

(34) Consideration of agreements involving performance bonds to a conference from a conference member guaranteeing compliance by the member with the rules and regulations of the conference.

(35) Consideration of agreements between members of two or more conferences or other rate-fixing agreements to discuss and agree upon common self-policing systems and cargo inspection services.

(b) If interested persons allege that a categorically-excluded action will have a significant environmental effect (e.g., increased or decreased air, water or noise pollution; use of recyclables; use of fossil fuels or energy), they shall, by written submission to the Commission's Office of Environmental Analysis (OEA), explain in detail their reasons. The OEA shall review these submissions and determine, not later than ten (10) days after receipt, whether to prepare an environmental assessment. If the OEA determines not to prepare an environmental assessment, such persons may petition the Commission for review of the OEA's decision within ten (10) days of receipt of notice of such determination.

(c) If the OEA determines that the individual or cumulative effect of a particular action otherwise categorically excluded offers a reasonable potential of having a significant environmental impact, it shall prepare an environmental assessment pursuant to § 504.5.

§ 504.5 Environmental assessments.

(a) Every Commission action not specifically excluded under § 504.4 shall be subject to an environmental assessment.

(b) The OEA may publish in the **Federal Register** a notice of intent to prepare an environmental assessment briefly describing the nature of the potential or proposed action and inviting writting comments to aid in the preparation of the environmental assessment and early identification of the significant environmental issues. Such comments must be received by the Commission no later than ten (10) days from the date of publication of the notice in the **Federal Register**.

§ 504.6 Finding of no significant impact.

(a) If upon completion of an environmental assessment, the OEA determines that a potential or proposed action will not have a significant impact on the quality of the human environment of the United States or of the global commons, a finding of no significant impact shall be prepared and notice of its availability published in the **Federal Register**. This document shall include

the environmental assessment or a summary of it, and shall briefly present the reasons why the potential or proposed action, not otherwise excluded under § 504.4 will not have a significant effect on the human environment and why, therefore, an environmental impact statement (EIS) will not be prepared.

(b) Petitions for review of a finding of no significant impact must be received by the Commission within ten (10) days from the date of publication of the notice of its availability in the **Federal Register**. The Commission shall review the petitions and either deny them or order the OEA to prepare an EIS pursuant to § 504.7. The Commission shall, within ten (10) days of receipt of the petition, serve copies of its order upon all parties who filed comments concerning the potential or proposed action or who filed petitions for review.

§ 504.7 Environmental impact statements.

(a) *General.* (1) An environmental impact statement (EIS) shall be prepared by the OEA when the environmental assessment indicates that a potential or proposed action to may have a significant impact upon the environment of the United States or the global commons.

(2) The EIS process will commence:

(i) For adjudicatory proceedings, when the Commission issues an order of investigation or a complaint is filed;

(ii) For rulemaking or legislative proposals, upon issuance of the proposal by the Commission; and

(iii) For other actions, the time the action is noticed in the **Federal Register**.

(3) The major decision points in the EIS process are:

(i) the issuance of an initial decision in those cases assigned to be heard by an Administrative Law Judge (ALJ); and

(ii) the issuance of the Commission's final decision or report on the action.

(4) The EIS shall consider potentially significant impacts upon the quality of the human environment of the United States and, in appropriate cases, upon the environment of the global commons outside the jurisdiction of any nation.

(b) *Draft environmental impact statements.* (1) The OEA will initially prepare a draft environmental impact statement (DEIS) in accordance with 40 CFR Part 1502.

(2) The DEIS shall be distributed to every party to a Commission proceeding for which it was prepared. There will be no fee charged to such parties. One copy per person will also be provided to interested persons at their request. The fee charged such persons shall be that provided in § 503.43 of this chapter.

(3) Comments on the DEIS must be received by the Commission within ten (10) days of the date the Environmental Protection Agency (EIS) publishes in the **Federal Register** notice that the DEIS was filed with it. Sixteen copies shall be submitted as provided in § 504.3(a). Comments shall be as specific as possible and may address the adequacy of the DEIS or the merits of the alternatives discussed in it. All comments received will be made available to the public. Extensions of time for commenting on the DEIS may be granted by the Commission for up to ten (10) days if good cause is shown.

(c) *Final environmental impact statements.* (1) After receipt of comments on the DEIS, the OEA will prepare a final environmental impact statement (FEIS) pursuant to 40 CFR Part 1502, which shall include a discussion of the possible alternative actions to a potential or proposed action. The FEIS will be distributed in the same manner as specified in paragraph (b)(2) of this section.

(2) The FEIS shall be prepared prior to the Commission's final decision and shall be filed with the Secretary, Federal Maritime Commission. Upon filing, it shall become part of the administrative record.

(3) For any Commission action which has been assigned to an ALJ for evidentiary hearing:

(i) The FEIS shall be submitted prior to the close of the record, and

(ii) The ALJ shall consider the environmental impacts and alternatives contained in the FEIS in preparing the initial decision.

(4)(i) For all proposed Commission actions, any party may, by petition to the Commission within ten (10) days following EPA's notice in the **Federal Register**, assert that the FEIS contains a substantial and material error of fact which can only be properly resolved by conducting an evidentiary hearing, and expressly request that such a hearing be held. Other parties may submit replies to the petition within ten (10) days of its receipt.

(ii) The Commission may delineate the issue(s) and refer them to an ALJ for expedited resolution or may elect to refer the petition to an ALJ for consideration.

(iii) The ALJ shall make findings of fact on the issue(s) and shall certify such findings to the Commission as a supplement to the FEIS. To the extent that such findings differ from the FEIS, it shall be modified by the supplement.

(iv) Discovery may be granted by the ALJ on a showing of good cause and, if granted, shall proceed on an expedited basis.

§ 504.8 Record of decision.

The Commission shall consider each alternative described in the FEIS in its decisionmaking and review process. At the time of its final report or order, the Commission shall prepare a record of decision pursuant to 40 CFR 1505.2.

§ 504.9 Information required by the Commission.

(a) Upon request of OEA, a person filing a complaint, protest, petition or agreement requesting Commission action shall submit to OEA, no later than ten (10) days from the date of the request, a statement setting forth, in detail, the impact of the requested Commission action on the quality of the human environment, if such requested action will:

(1) Alter cargo routing patterns between ports or change modes of transportation;

(2) Change rates or services for recyclables;

(3) Change the type, capacity or number of vessels employed in a specific trade; or

(4) Alter terminal or port facilities.

(b) The statement submitted shall, to the fullest extent possible, include:

(1) The probable impact of the requested Commission action on the environment (*e.g.*, the use of energy or natural resources, the effect on air, noise, or water pollution), compared to the environmental impact created by existing uses in the area affected by it;

(2) Any adverse environmental effects which cannot be avoided if the Commission were to take or adopt the requested action; and

(3) Any alternatives to the requested Commission action.

(c) If environmental impacts, either adverse or beneficial, are alleged, they should be sufficiently identified and quantified to permit meaningful review. Individuals may contact the OEA for informed assistance in preparing this statement. The OEA shall independently evaluate the information submitted and shall be responsible for assuring its accuracy if used by it in the preparation of an environmental assessment or EIS.

(d) In all cases, the OEA may request every common carrier by water, or marine terminal operator, or any officer, agent or employee thereof, as well as all parties to proceedings before the Commission, to submit, within ten (10) days of such request, all material information necessary to comply with NEPA and this part. Information not produced in response to an informal request may be obtained by the Commission pursuant to section 21 of

the Shipping Act or section 15 of the Shipping Act of 1984.

§ 504.10 Time constraints on final administrative actions.

No decision on a proposed action shall be made or recorded by the Commission until the later of the following dates unless reduced pursuant to 40 CFR 1506.10(d), or unless required by a statutorily-prescribed deadline on the Commission action:

(a) Forty (40) days after EPA's publication of the notice described in § 504.7(b) for a DEIS; or

(b) Ten (10) days after publication of EPA's notice for an FEIS.

§ 504.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
504.4 through 504.7	3072-0035
504.9	3072-0035.

PART 505—COMPROMISE, ASSESSMENT, SETTLEMENT AND COLLECTION OF CIVIL PENALTIES

Sec.

505.1 Purpose and scope.
505.2 Definitions.
505.3 Assessment of civil penalties: procedures; criteria for determining amount; limitations; relation to compromise.
505.4 Compromise of penalties: relation to assessment proceedings.
505.5 Payment of penalty: method, default.
Appendix A—Example of Compromise Agreement to be Used Under 46 CFR 505.4.
Appendix B—Example of Promissory Note To Be Used Under 46 CFR 505.5.

Authority: 5 U.S.C. 552, 553, secs. 32 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 831 and 841a); secs. 10, 11, 13, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709, 1710, 1712, and 1716.)

§ 505.1 Purpose and scope.

The purpose of this part is to implement the statutory provisions of section 32 of the Shipping Act, 1916, and section 13 of the Shipping Act of 1984, by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Shipping Act of 1984, and/or any order, rule or regulation (except for procedural rules and regulations contained in Part 502 of this chapter) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes.

§ 505.2 Definitions.

For the purposes of this part:

(a) "*Assessment*" means the imposition of a civil penalty by order of the Commission after a formal docketed proceeding.

(b) "*Commission*" means the Federal Maritime Commission.

(c) "*Compromise*" means the process whereby a civil penalty for a violation is agreed upon by the respondent and the Commission outside of a formal, docketed proceeding.

(d) "*Person*" includes individuals, corporation, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(e) "*Respondent*" means any person charged with a violation.

(f) "*Settlement*" means the process whereby a civil penalty or other disposition of the case for a violation is agreed to in a formal, docketed proceeding instituted by order of the Commission.

(g) "*Violation*" includes any violation of sections 14 through 21 (except section 16 First and Third) of the Shipping Act, 1916; section 2 of the Intercoastal Shipping Act, 1933; any provision of the Shipping Act of 1984; and/or any order, rule or regulation (except for procedural rules and regulations contained in Part 502 of this chapter) issued or made by the Commission in the exercise of its powers, duties and functions under the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, or the Shipping Act of 1984.

(h) Words in the plural form shall include the singular and vice versa; and words importing the masculine gender shall include the feminine and vice versa. The terms "includes" and "including" do not exclude matters not listed but which are in the same general class. The word "and" includes "or", except where specifically stated or where the context requires otherwise.

§ 505.3 Assessment of civil penalties: procedures; criteria for determining amount; limitations; relation to compromise.

(a) *Procedure for assessment of penalty.* The Commission may assess a civil penalty only after notice and opportunity for a hearing under section 22 of the Shipping Act, 1916, or sections 11 and 13 of the Shipping Act of 1984. The proceeding, including settlement negotiations, shall be governed by the Commission's Rules of Practice and Procedure in Part 502 of this Chapter. All settlements must be approved by the Presiding Officer. The full text of any settlement must be included in the final order of the Commission.

(b) *Criteria for determining amount of penalty.* In determining the amount of any penalties assessed, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission's rules and regulations and the applicable statutes. The Commission shall also consider the respondent's degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.

(c) *Limitations; relation to compromise.* When the Commission, in its discretion, determines that policy, justice or other circumstances warrant, a civil penalty assessment proceeding may be instituted at any time for any violation which occurred within five years prior to the issuance of the order of investigation. A proceeding may also be instituted at any time after the initiation of informal compromise procedures, except where a compromise agreement for the same violations under the compromise procedures has become effective under § 505.4(e).

§ 505.4 Compromise of penalties: relation to assessment proceedings.

(a) *Scope.* Except in pending assessment proceedings provided for in § 505.3 the Commission, when it has reason to believe a violation has occurred, may invoke the informal compromise procedures of this section.

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except where circumstances render it unnecessary, send a registered or certified demand letter to the respondent describing specific violation(s) on which the claim is based, including the particular facts, dates and other elements necessary for the respondent to identify the specific conduct constituting the alleged

violation; the amount of the penalty demanded; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The demand shall also include the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise.

(c) *Request for compromise.* Any person receiving a demand provided for in paragraph (b) of this section may, within the time specified, deny the violation, or submit matters explaining, mitigating or showing extenuating circumstances, as well as make voluntary disclosures of information and documents.

(d) *Criteria for compromise.* In addition to the factors set forth in § 505.3(b), in compromising a penalty claim, the Commission may consider litigative probabilities, the cost of collecting the claim and enforcement policy.

(e) *Disposition of claims in compromise procedures.* (1) When the penalty is compromised, such compromise will be made conditional upon the full payment of the compromised amount upon such terms and conditions as may be allowed.

(2) When a penalty is compromised and the respondent agrees to settle for that amount, a compromise agreement shall be executed. (One example of such a compromise agreement is set forth as Appendix A to this part.) This agreement, after reciting the nature of the claim, will include a statement evidencing the respondent's agreement to the compromise of the Commission's penalty claim for the amount set forth in the agreement and will also embody an approval and acceptance provision which is to be signed by the appropriate Commission official. Upon compromise of the penalty in the agreed amount, a copy of the executed agreement shall be furnished to the respondent.

(3) Upon completion of the compromise, the Commission may issue a public notice thereof, the terms and language of which are not subject to negotiation.

(f) *Relation to assessment proceedings.* Except by order of the Commission, no compromise procedure shall be initiated or continued after institution of a Commission assessment proceeding directed to the same violations. Any offer of compromise submitted by the respondent pursuant to this section shall be deemed to have been furnished by the respondent without prejudice and shall not be used against the respondent in any proceeding.

(g) *Delegation of compromise authority.* The compromise authority set forth in this part is delegated to the Director, Bureau of Hearing Counsel.

§ 505.5 Payment of penalty: method; default.

(a) *Method.* Payment of penalties by the respondent shall be made by:

(1) A bank cashier's check or other instrument acceptable to the Commission;

(2) Regular installments, with interest where appropriate, by check or other instrument acceptable to the Commission after the execution of a promissory note containing a confess-judgment agreement (Appendix B); or,

(3) A combination of the above alternatives.

(b) All checks or other instruments submitted in payment of claims shall be made payable to the Federal Maritime Commission.

(c) *Default in payment.* Where a respondent fails or refuses to pay a penalty properly assessed under § 505.3, or compromised and agreed to under § 505.4, appropriate collection efforts will be made by the Commission, including, but not limited to referral to the Department of Justice for collection. Where such a defaulting respondent is a licensed freight forwarder, such a default may also be grounds for revocation or suspension of the respondent's license, after notice and opportunity for hearing, unless such notice and hearing have been waived by the respondent in writing.

Note.—This part does not contain any collection of information requests or requirements within the meaning of the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Appendix A.—Example of Compromise Agreement To Be Used Under 46 CFR 505.4.

Compromise Agreement

FMC File No. ———

This Agreement is entered into between:

(1) The Federal Maritime Commission and,

(2) ———— hereinafter referred to as respondent.

Whereas, the Commission is considering the institution of an assessment proceeding against respondent for the recovery of civil penalties provided under the ———— Act ———, for ——— alleged violation(s) of Section(s) ———,

Whereas, this course of action is the result of practices believed by the Commission to have been engaged in by respondent to wit:

_____

—. _____

Whereas, Section ——— of the ———— Act ——— authorizes the Commission to collect and compromise civil penalties arising from the alleged violation(s) set forth and described above; and,

Whereas, the respondent has terminated the practices which are the basis of the alleged violation(s) set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate, discourage and prevent these practices by respondent or its officers, employees and agents.

Now Therefore, in consideration of the premises herein, and in compromise of all civil penalties arising from the violation(s) set forth and described herein that may have occurred between (date) and (date), the undersigned respondent herewith tenders to the Federal Maritime Commission a bank cashier's check in the sum of $———, upon the following terms of settlement:

1. Upon acceptance of this agreement of settlement in writing by the Director of the Bureau of Hearing Counsel of the Federal Maritime Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claims for recovery of civil penalties from respondent arising from the alleged violations set forth and described herein, that have been disclosed by respondent to the Commission and that occurred between (date) and (date).

2. The undersigned voluntarily signs this instrument and states that no promises or representations have been made to the respondent other than the agreements and consideration herein expressed.

3. It is expressly understood and agreed that this agreement is not to be construed as an admission of guilt by undersigned respondent to the alleged violations set forth above.

4. Insofar as this agreement may be inconsistent with Commission procedures for compromise and settlement of violations, the parties hereby waive application of such procedures.

By _____

Title _____

Date _____

Approval and Acceptance

The above Terms and Conditions and Amount of Consideration are hereby Approved and Accepted:

By the Federal Maritime Commission:

_____

(Hearing Counsel)

_____

Director, Bureau of Hearing Counsel

Date _____

Appendix B—Example of Promissory Note To Be Used Under 46 CFR 505.5

Promissory Note Containing Agreement for Judgment

FMC File No. ———

For valued received, ———— promises to pay to the Federal Maritime Commission (the Commission) the principal sum of $——— ($——) to be paid at the offices of the Commission in Washington, D.C., by bank cashier's or certified check in the following installments:

$——— ($——) within — months of execution of the settlement agreement by the Director of the Bureau of Hearing Counsel;

$——— ($——) within — months of execution of the agreement;

[Further payments if necessary]

In addition to the principal amount payable hereunder, interest on the unpaid balance thereof shall be paid with each installment. Such interest shall accrue from the date of this execution of this Promissory Note by the Director of the Bureau of Hearing Counsel, and be computed at the rate of [—— percent (——%) per annum.]

If any payment of principal or interest shall remain unpaid for a period of ten (10) days after becoming due and payable, the entire unpaid principal amount of this Promissory Note, together with interest thereon, shall become immediately due and payable at the option of the Commission without demand or notice, said demand and notice being hereby expressly waived.

If a default shall occur in the payment of principal or interest under this Promissory Note, (Respondent) does hereby authorize and empower any U.S. attorney, any of its assistants or any attorney of any court of record, Federal or State, to appear for him or her, and to enter and confess judgment against (Respondent) for the entire unpaid principal amount of this Promissory Note, together with interest, in any court of record, Federal or State; to waive the issuance and service of process upon (Respondent) in any suit on this Promissory Note; to waive any venue requirement in such suit; to release all errors which may intervene in entering such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

(Respondent) hereby ratifies and confirms all that said attorney may do by virtue thereof.

This Promissory Note may be prepaid in whole or in part by Respondent by bank cashier's or certified check at any time, provided that accrued interest on the principal amount prepaid shall be paid at the time of the prepayment.

By: ———

Title: ———

Date: ———

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-29100 Filed 11-5-84; 8:45 am]

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federal register

Tuesday
November 6, 1984

PART III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 91

Rotorcraft Regulatory Review Program; Amendment No. 2; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 91

[Docket No. 23266; Amdts. 1-32, 27-21, 29-24, and 91-185]

Rotorcraft Regulatory Review Program; Amendment No. 2

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Final rule.

SUMMARY: This rule adopts new airworthiness standards for type certification of normal and transport category rotorcraft. New Standards are necessary because of the phenomenal growth of the rotorcraft industry and the recognition by both government and industry that the updated standards are needed. This rule changes those sections of Parts 1, 27, 29, and 91, of the Federal Aviation Regulations which apply to rotorcraft flight characteristics, systems, and equipment.

EFFECTIVE DATE: December 6, 1984.

FOR FURTHER INFORMATION CONTACT: Jim S. Honaker, Regulations Program Management (ASW-111), Aircraft Certification Division, mailing address: P.O. Box 1689, Fort Worth, Texas 76101, or office location at 4400 Blue Mound Road, Fort Worth, Texas 76106, telephone (817) 877-2552.

SUPPLEMENTARY INFORMATION: These amendments are the second in a series of amendments to be issued as a part of the Rotorcraft Regulatory Review Program. The first of the series of amendments of the Rotorcraft Regulatory Review Program addressed applicability, instrument flight rules (IFR) certification and icing certification standards and was published in the Federal Register on January 31, 1983 (48 FR 4374).

These amendments are based on Notice of Proposed Rulemaking No. 82-12 published in the Federal Register on August 26, 1982 (47 FR 37806). All interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and upon further review by the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, these amendments and reasons for their adoption are the same as those contained in Notice 82-12, and, unless otherwise indicated, the proposals contained in the notice have been adopted without change.

Discussion of Comments

The following discussions are keyed to like-numbered proposals in Notice 82-12 and are presented in the same order as the corresponding amendments found in the rules portion of this document.

Proposal 2-1. Three comments were received to this proposal, all of which primarily agreed but raised areas of concern. One commenter recommends deleting the last sentence of the § 1.1 proposed definitions of climbout speed and takeoff safety speed. That sentence, in both definitions, states that these airspeeds are determined from the Rotorcraft Flight Manual. The commenter is correct in that this location of airspeed information is not appropriate in a definition. The location of airspeed information is also inappropriate for a certification applicant that determines these airspeeds by engineering actions which are used to develop the Rotorcraft Flight Manual. Accordingly, the last sentences in these proposed definitions are deleted.

The same commenter and a second commenter suggest that further changes appear necessary to clarify and differentiate between the definitions and abbreviations in Part 1 pertaining to fixed-wing aircraft and helicopters. Such a change, however, was recognized by the commenters as being beyond the scope of the notice.

A third commenter suggests that, as worded, takeoff safety speed will be applicable to fixed-wing aircraft and a decision on its inclusion should be withheld until fixed-wing operators have commented. All these commenters have some association with fixed-wing aircraft and offered no comments on conflict with aircraft usage. The FAA concludes that the definition is compatible with all aircraft. The definitions of this proposal are adopted with the changes noted.

Proposal 2-2. No comments were received on the proposal to add the definition of V_{TOSS} to § 1.2 except the recommendation for further clarification between rotorcraft and airplane definitions and abbreviations of Part 1 noted in Proposal 2-1. The proposed amendment is adopted without change.

Proposal 2-3. No comments were received on this proposal.

Proposal 2-4. One commenter recommends deleting the phrase "prior to takeoff" from the proposed addition of § 27.45(f) concerning engine power determination. A second commenter made the same recommendation for Proposal 2-33.

Determining engine power available before being committed to flight has long been a problem that helicopter pilots have faced. During normal operations, applying full power results in the helicopter becoming airborne and climbing. Even applying full power to only one engine on a multiengine helicopter will result in it becoming light on the landing gear, essentially flying, or actually airborne if operating at a light weight. Shortly after becoming airborne is not the proper time for the pilot to discover that there is less power available than anticipated.

The first commenter states that the proposed change does not recognize advances in technology which may indicate engine condition to the pilot before takeoff and that a power check before each flight is time-consuming, unnecessary, and economically punishing. The second commenter states that engine characteristics are such that meaningful checks must be completed at or near such [full power] ratings which would probably result in single-engine liftoff.

As noted in the explanation of Proposal 2-33, a preflight power-assurance check procedure is required by special conditions for all current transport category turbine-powered rotorcraft. Compliance typically involves flight manual instructions for partial power checks in addition to specifications for validating limit power during production acceptance and engine maintenance or replacement activities. Similar methods of compliance are suitable under the proposed rule. The FAA recognizes the deficiencies of such a pretakeoff check as stated by the second commenter but considers this procedure significantly safer than having no means to evaluate engine operation.

The second commenter suggests that a system of engine condition monitoring carried out at significantly high power plus a preflight function check would satisfy this requirement. The FAA agrees provided the commenter's meaning of "preflight functional check" is essentially the same as "a means must be provided to permit the pilot to determine prior to takeoff." The proposal does not preclude the use of advanced technology for a system such as automatic monitoring of engine condition with appropriate warning to the pilot.

A third commenter states that there is a need to simplify procedures and recommends use of a calculator, either mechanical or electronic, as an

improvement over charts. Specifying such a means to make a power check would inhibit innovation. The proposed amendment is adopted without change.

Proposal 2–5. The only comment received agrees with the proposal.

Proposal 2–6. One commenter agrees with the proposal to change § 27.79 to permit determination of the height-velocity envelope at the highest weight allowing hovering out-of-ground effect. A second commenter recommends that the second sentence of the proposal be changed for helicopters such that the weight need not exceed the highest weight allowing hovering out-of-ground effect at altitudes above sea level. This commenter states that his proposed change would be in agreement with the change proposed (and subsequently accepted) for § 29.79 in Notice 80–25 (45 FR 83424), the first notice of this Rotorcraft Regulatory Review Program. However, that notice states that the height-velocity demonstration weight must be the maximum approved for takeoff and landing but need not exceed the weight allowing hovering out-of-ground effect. The new § 29.79(a)(2) establishes demonstration weights at or near the maximum operating weight. The commenter's suggestion does not establish a minimum demonstration weight, that is, minimum weight does not exceed the highest weight allowing hovering out-of-ground effect. Accordingly, the amendment is adopted without change.

Proposal 2–7. One commenter agrees with the proposal to simplify § 27.141 and add temperature accountability into the flight characteristics requirements. A second commenter questions the need to demonstrate all flight characteristics at all allowable temperatures and requests that the basis for the need be clearly addressed in Advisory Circular 29–2, "Certification of Transport Category Rotorcraft," and in the comparable document that is to be written for Part 27. This information will be included in the advisory circulars. The FAA has found that some advanced technology rotor systems are affected by temperature variations in some areas of stability and control, vibration, and the more well-known rotor blade tip mach number effects. The amendment is adopted as proposed.

Proposal 2–8. Only one comment was received, and that comment agrees with the proposal.

Proposal 2–9. Only one comment was received, and that comment agrees with the proposal.

Proposal 2–10. One comment on the proposed § 27.161 trim control requirements recommends that the control forces must be trimmable only to "approximately zero" rather than "zero." The proposal did not address control force but only adds collective trim control to the present requirement for longitudinal and lateral trim controls. The commenter states that for many years helicopters have operated successfully without "zero" trimming and that the small deviations from zero have been taken care of by small amounts of friction.

The commenter's suggestion is the same as one received for the Rotorcraft Regulatory Review conference (conference Proposal 35) and was discussed in the Appendix to Notice 82–12. The FAA finds that the reasons given in the Appendix to Notice 82–12 for requiring zero trim are still valid.

A second commenter agrees with the proposal, but wants the capability of disabling the trim system at the pilot's option for takeoff, landing, and hovering. This change is beyond the scope of the notice. The amendment is adopted as proposed.

Proposals 2–11 and 2–12. One commenter recommends deleting proposed §§ 27.173(c) and 27.175(d), both of which refer to static longitudinal stability in a hover. The commenter states that hovering is a hands-on flight condition requiring continuous movement of all four controls. The commenter argued that requiring that the pilot's hand be in a certain range of positions does not result in an increased level of safety. The commenter also states that the general paragraph on controllability and maneuverability provides adequate safety requirements.

The proposed changes concerning the hover flight regime serve only to clarify the present rules. Existing stability and control literature shows the unsafe flight conditions resulting from excessive negative stability and the limits of negative stability that allow controlled, but not necessarily acceptable, flight. The FAA agrees that hovering presents special considerations. Deleting the paragraphs, as the commenter suggests, would leave the hover flight condition addressed by the most general of requirements. This could lead to a confusion of interpretations of hover requirements such as including requirements intended only for level forward flight. To meet the positive stability requirements of forward flight during hover would be extremely burdensome, perhaps not even possible.

A second commenter agrees with both proposals as written. These amendments are adopted as proposed.

Proposal 2–13. One commenter agrees with the proposal to add a new § 27.177 requiring positive static directional stability. A second commenter recommends deleting the last sentence, which requires sufficient pilot cues of sideslip to assure safe operations, because it is unnecessary and introduces a qualitative issue which could lead to misinterpretation and misapplication of the intended rule.

While the FAA does not agree that the last sentence should be deleted, it has been changed to read "Sufficient cues must accompany sideslip to alert the pilot when approaching sideslip limits." This will more clearly state the intent of the rule. The alternative to this somewhat broad statement would be to identify all possible cues which would result in unnecessary complexity.

A third commenter recommends that instead of requiring positive static directional stability, the rule should only require that there be no negative static directional stability perceptible to the pilot through the directional pedals. Positive directional stability is necessary to ensure minimum satisfactory stability and control characteristics and to inhibit exceeding sideslip limits. This suggestion could result in considerable misinterpretation and misapplication as to how much negative stability is perceptible to which pilot.

The third commenter also states that the proposed requirement to demonstrate static directional stability will increase certification test time by 5 hours. Review by the FAA indicates that the wording of the proposal, with reference to the conditions for demonstration of static longitudinal stability, could be misinterpreted to require excessive (5 hours) testing. The amendment is reworded to specify testing at the trim airspeeds used to demonstrate static longitudinal stability in climb and level flight (and in autorotation for Part 29) tests. This will permit the directional stability tests to be accomplished on the same flights as static longitudinal stability tests with an increase of test time of less than 1 hour.

The amendment is adopted with the noted changes to clarify the intent of the proposal.

Proposal 2–14. One commenter agrees with the proposal to add a new § 27.610 specifying lightning protection requirements. A second commenter suggests limiting the lightning protection requirement to those rotorcraft being certificated for IFR flight. This commenter states that in 13 million VFR flight hours of one manufacturer's fleet, only one non-severe lightning strike was reported and that a statement in the Rotorcraft Flight Manual to avoid flying near storms or vertical clouds would be sufficient. This commenter also states

that meeting the requirement would be very expensive and complex but he fails to provide any details or other indication of cost or magnitude. Research by numerous technical groups studying lightning has disclosed that strikes occur in both VFR and IFR conditions. These studies have also shown that unless thunderstorm turbulence, hail, and rain are circumnavigated by well over 25 miles, an occasional lightning strike will occur. There are many reports of lightning strikes occurring to aircraft operating between clouds or in areas where no thunderstorms were forecast, and a few pilots have reported "bolts from the blue."

The FAA is aware of one U.S. manufactured helicopter series that has been struck by lightning four times since certification in 1980. This particular helicopter series is very limited in number, but most operations have been in a more than normally hostile weather environment. Only minor damage resulted from the lightning strikes because the helicopter manufacturer voluntarily followed good design practices for lightning protection although the applicable airworthiness regulation had no specific lightning protection requirement. In a recent study including in-flight strike data collected over an eight year period, 36 percent of the recorded strikes occurred below 10,000 feet man sea level (MSL) altitude, and 87 percent of the recorded strikes occurred below 16,000 feet MSL. Since rotorcraft are not pressurized, are rarely equipped with oxygen, and operation at the higher altitudes is inefficient, most operations occur below 10,000 feet MSL and very rarely above 16,000 feet MSL.

The proposed change uses the same words as those used for large airplanes in Part 25. Many airplanes have been struck by lightning, but only a very few have resulted in catastrophic failure. Since the wording of the proposed change is general in nature and there are no specific provisions uniquely applicable to fixed-wing aircraft, the FAA concludes extension of the standard to rotorcraft will provide rotorcraft occupants the same degree of safety from lightning as provided fixed-wing aircraft occupants.

The FAA forecasts that by the year 2000 the rotorcraft fleet size will nearly double to approximately 20,000 units. In addition, the trend is going towards more complex, fully instrument flight equipped rotorcraft that will be conducting more operations in adverse weather conditions, including icing, where lightning strikes are more likely to occur.

Application of new technology to rotorcraft is also a factor in consideration of the need for protection against lightning. There is an increasing trend toward the use of composite materials in the rotorcraft structure. Since these materials are nonconductive, additional precautions must be taken to assure proper lightning current paths to retain structural integrity and allow protection of installed systems. Programmable, microprocessor-based digital equipment is rapidly being applied in critical functions such as electronic fuel controls and Electronic Flight Instrument Systems (EFIS). The EFIS systems have complete instrument panel displays that are of the cathode ray type, driven by digital computers. Many present generation automatic flight control systems are digital based, and further application of digital computer technology to critical flight controls is anticipated. If proper design precautions are not taken in the basic rotorcraft and system installations, computer memories can be lost, programs can be upset, or complete computer destruction can occur with a lightning strike.

Although Notice 82–12 presented no economic estimate for this change and specifically requested such data, none was received—except the second commenter's statement that it would be "very expensive." However, as noted in Table 1 of the economic summary, an FAA, NASA, and DOD task force is engaged in a lightning research effort. The FAA plans to pass the results of that effort on to the public via advisory circular material, thus minimizing each applicant's lightning research costs.

In view of the increased criticality of structure and systems subject to lightning damage, plus the increase in fleet size and operations in environments where lightning strikes frequently occur, the FAA finds it necessary to provide these standards. Therefore the amendment is adopted as proposed.

Proposal 2–15. One commenter suggests that "any failure" as used in proposed § 27.672(a) be clarified to exclude mechanical failures. The FAA disagrees as §§ 27.695(c) and 29.695(c) require that for power-boost and power-operated control systems, "The failure of mechanical parts (such as piston rods and links), and the jamming of the power cylinders, must be considered unless they are extremely improbable."

FAA review noted that the reference to § 29.671 should be § 27.671; this is corrected. The proposed amendment is adopted with the corrected reference.

Proposal 2–16. Only one comment was received, and it agrees with this proposal.

Proposal 2–17. One commenter agrees with the proposal to add a new § 27.729 concerning landing gear retracting mechanisms but states that with existing systems where "landing-gear-not-down-warning" is based only on airspeed, there is a problem of continuous warning when operating with Category B external loads at slow airspeeds and with the landing gear retracted. The proposal requires a manual shutoff capability which will enable the crew to silence the aural warning and continue such external-load Category B operations. Several rotorcraft have an airspeed activated system and the FAA has found that this is satisfactory. The amendment is adopted as proposed.

Proposal 2–18. Only one comment was received and it agrees with this proposal.

Proposal 2–19. This is a parallel proposal to Proposal 2–52. See that proposal for comments, analysis, and changes.

Proposal 2–20. This proposal changes the title of § 27.785 and significantly increases the detail of seats, berths, safety belts, and harnesses requirements. One commenter suggests that paragraph (b) be replaced by a requirement that each occupant must be protected from head and upper torso injury by a safety belt and shoulder harness. This commenter states that the shoulder harness increases an occupant's tolerance to vertical impact loads without injury from about 4g to 25g. However, no cost data for this requirement were submitted and the FAA estimates that the cost would be significant. The FAA is participating in several studies and reviews of crash results and requirements. The proposed amendment aligns the rule with airplane rules and the limited conclusions available to date. It would be inappropriate to accept the suggested change until more data, especially cost, are available from these or other studies.

A second commenter suggests that a third option be listed in paragraph (b)(2) indicating that a safety belt plus a shoulder harness is acceptable and that the proposed (b)(2)(ii) be prefaced by the phrase, "for aft-facing seats."

The latter portion of this suggestion would appear to eliminate consideration for side-facing seats, while the proposal, without the "aft-facing seat" phrase, was intended to include seats with any orientation.

The first portion of this commenter's suggestion points out that a combination

of safety belt and shoulder harness is an acceptable method. This proposed change helps clarify the amendment and is included in paragraph (b)(2).

A third commenter notes that the National Transportation Safety Board (NTSB) has recommended for many years that shoulder harnesses be installed in light airplanes at all seat locations and sees no difference in the basic survivability issues between airplanes and rotorcraft. This commenter concludes that sufficient data, including U.S Army crashworthiness data dating back to 1960, are available to justify a requirement for a shoulder harness at each seat location in normal category rotorcraft. A fourth commenter states that every effort should be made to take advantage of the research and development conducted during the last several years to require built-in crashworthiness. As noted, most of the crashworthiness studies have been accomplished by and for the military, which has different design standards than civil rotorcraft. Using only military data to establish civil requirements could very well result in requirements that would be excessively and possibly prohibitively expensive in initial and operating costs. Further changes will be deferred until completion of the FAA crashworthiness program. The amendment is adopted with the one change discussed.

Proposal 2–21. Only one comment was received. It agrees with this proposal.

Proposal 2–22. One commenter agrees with the proposal to relax equipment, systems, and installation design requirements for single engine rotorcraft and to require consideration of lightning strikes on rotorcraft.

Two additional commenters suggest that proposed § 27.1309(d) include a reference to § 27.610, to agree with the § 29.1309. This reference is added.

A fourth commenter says he does not understand the different criteria based on the number of engines. In the present rules, the requirements in § 27.1309 (a) and (b) are identical to § 29.1309 (a) and (b), which is contrary to the concept of less strict requirements in Part 27, where applicable. The proposed change relieves the requirements of Part 27 by considering only probable failures and by recognizing the different operational capabilities and levels of probable safety between single-engine and multiengine rotorcraft after a probable failure. The proposed amendment is adopted with the reference to § 27.610 added.

Proposal 2–23. This proposal adds a new § 27.1329 describing automatic pilot system requirements. One comment suggests that "system" be replaced with "automatic pilot" to be consistent with § 29.1329(e). This will also be consistent with §§ 23.1329(e) and 25.1329(g). The FAA concurs and the proposal is adopted with this change.

Proposal 2–24. Only one comment was received and that comment agrees with the proposal.

Proposal 2–25. Only one comment was received and that comment agrees with this proposal.

Proposal 2–26. One commenter recommends adding the phrase "except for the weight demonstrated according to § 27.79" to indicate more clearly that height-velocity data are in no way limiting to the proposed change to delete § 27.1519 (b) and the (a) designation of § 27.1519(a).

The explanation in the notice gives considerable detail about changes being made to the rule to clarify that height-velocity data are not limitations. Also similar wording has been in effect for many years without causing problems. Therefore, the commenter's exception phrase is not considered necessary. A second commenter agrees with the proposal. The amendment is adopted as proposed.

Proposal 2–27. Only one comment was received and it agrees with this proposal.

Proposal 2–28. One commenter agrees with the proposal concerning § 27.1555, Control markings. A second commenter suggests that proposed paragraph (e), which would require that the maximum landing gear operating speed be plainly marked close to the landing gear control, be deleted as unnecessary. This commenter states that all pilots know landing gear operating speeds without spoonfeeding them with unwarranted placards and instructions. The FAA does not agree.

Retractable landing gear is still not common in small helicopters. A pilot that flies rotorcraft with and without retractable gear may know and review the operating speeds but landing gear speeds are not speeds that stand out during a review. Therefore, a placard reminder seems prudent.

The FAA has reviewed the proposal to require the marking to be located close to the landing gear control. While displaying the speed near the control has several advantages, many pilots prefer using one placard for several airspeed limits. A one-placard concept allows placing this information where it is consolidated and clearly available to the pilot without disrupting good instrument or control placement. Therefore, this proposal, as adopted, requires the maximum landing gear operating speed to be displayed in clear view of the pilot to permit the one-placard concept.

Proposal 2–29. One commenter agrees with the proposal to shorten the limitation placard wording required by § 27.1559. A second commenter suggests that the required placard state, "Refer to the approved Rotorcraft Flight Manual for kinds of approved operations." According to the commenter, this would relieve the requirement for a drawing change, a new decal, and FAA approval of these each time there is a change in approved operations.

Normally, this would be a very minor part of the effort to obtain FAA approval of a different kind of operation. One manufacturer sends Rotorcraft Flight Manual Supplements to all owners when a modification kit is FAA approved; however, each rotorcraft is not approved for the new kind of operation until the kit is installed, so a pilot looking at one of these Rotorcraft Flight Manuals still would not know if the helicopter is approved for that type operation. The limitation placard as proposed is the most positive method of readily identifying the kinds of operations that are approved for a specific rotorcraft. The amendment is adopted as proposed.

Proposal 2–30. One commenter agrees with the proposal. A second commenter recommends that the proposed § 27.1585(a) (1) and (2) and the lead-in sentence to these subdivisions be deleted. This commenter states that the phrase "other information" in paragraph (a), concerning operating procedures, adequately covers the requirement to identify takeoff and landing surfaces used in the tests and the appropriate airspeeds. The commenter states that the requirement to identify takeoff and landing surface and associated airspeeds is not the only type of "other information" and should be contained in guidance information rather than the rule. While the kind of takeoff and landing surface and associated airspeeds are not the only type of "other information," these are important and specific enough to be included in the rule as a requirement for all rotorcraft. The amendment is adopted as proposed.

Proposal 2–31. One commenter agrees with the proposal. A second commenter suggests statements in § 27.1587 to prevent including performance information which exceeds operating limits and a requirement to show the maximum demonstrated wind for starting and stopping the rotors. This commenter also suggests that the minimum demonstration wind for starting and stopping the rotors be at least 17 knots to agree with

controllability and maneuverability requirements. These suggestions were originally conference Proposal 144 and were removed from further consideration as noted in the appendix of Notice 82–12 as being an unnecessary burden for small rotorcraft. The rationale in the appendix explanation is still valid. The amendment is adopted as proposed.

Proposal 2–32. No comments were received on this proposal.

Proposal 2–33. Two commenters suggest that the word "limiting" be deleted from the proposed § 29.45(c)(2) as it relates to power absorbed by the accessories and services. The second of these commenters recommends that "and approved" be added to the end of this proposal. Both commenters state that including the word "limiting" will cause confusion since the intent of the change is to allow power determination with the accessories at a value less than the limit value. As an example, an applicant may select a generator that has a "limit" rating of 300 amperes but the maximum load possible for this specific rotorcraft would be 200 amperes; therefore, the power absorbed by this generator load would be based on 200 rather than 300 amperes. Adding equipment to this rotorcraft that could impose a load greater than the 200 amperes would require meeting all the certification requirements, including power determination, as if a larger generator were installed. Both commenters suggest that guidance material should be used to clarify power determination. The FAA agrees with these comments and § 29.45(c)(2) is changed by deleting "limiting" and adding "and approved".

The same two commenters also recommend that the phrase "prior to takeoff" be deleted in the proposed § 29.45(f). A third commenter suggests simplifying the procedure with a mechanical or electronic computer. The FAA's response to these comments is contained in the discussion of Proposal 2–4. This portion of the amendment is adopted as proposed.

Proposal 2–34. One commenter agrees with the proposal. A second commenter notes that as the proposal is worded, a critical decision point (CDP) and acceleration to V_{TOSS} below 35 feet or a descent from the CDP to below 35 feet while accelerating to V_{TOSS} would not be permitted. This is not the intent of the proposal. This commenter suggests the wording ". . . takeoff safety speed and a height of 35 feet above the ground or greater and the climbout must be made . . . ." This wording corrects the proposal to that intended and § 29.59 is revised accordingly.

Proposals 2–35 and 2–36. Only one commenter responded to these proposals, and his comments agree with both proposals.

Proposal 2–37. The comments offered on Proposal 2–7 were also provided on the proposal to add temperature considerations to § 29.141. See explanation for Proposal 2–7. The amendment is adopted as proposed.

Proposal 2–38. Only one comment was received, and it agrees with this proposal.

Proposal 2–39. Only one comment was received and it agrees with the proposal.

Proposal 2–40. One commenter suggests that a directional trim requirement be added to § 29.161. As stated in Proposal 2–10 explanation, directional trim was considered and deemed not required. The commenter does not present justification that had not been previously considered. The commenter also suggests requiring trimming of collective forces to zero in a hover. This was also considered and, as noted in Notice 82–12 (Proposal 2–10), hovering flight is considered a hands-on condition for which a trim requirement is not warranted.

The same commenter further suggests that cyclic and directional control forces of zero in a hover are not required, but some maximum value, such as 5 pounds, should be required for each axis. This is beyond the scope of the notice.

A second commenter suggests requiring the capability to disarm the trim system. This also is beyond the scope of the notice. The amendment is adopted as proposed.

Proposals 2–41 and 2–42. Both of these proposals concern static longitudinal stability in a hover as addressed in § 29.173 and § 29.175. One commenter agrees with both. A second commenter had the same comments as for Proposals 2–11 and 2–12, proposals for comparable requirements for Part 27. Refer to Proposals 2–11 and 2–12 for explanation. In Proposal 2–41, reference to § 27.175 (a) and (d) is corrected to § 29.175 (a) and (d). The amendment is adopted with the noted corrections.

Proposal 2–43. The same comments as for Proposal 2–13 were received for this proposal adding static directional stability requirements in a new § 29.177. See Proposal 2–13 for explanation; the same changes are made and the amendment adopted.

Proposal 2–44. One commenter agrees with the proposal for a new § 29.181 concerning dynamic stability for Category A rotorcraft. A second commenter suggests deleting the entire proposal because the FAA's claims are incorrect when stating that all recently certificated models have met this dynamic stability requirement and that it is less stringent than the fixed-wing requirement. This commenter states that some recently certificated rotorcraft may possess positive damping but most do not comply throughout the approved operating envelope. To meet this requirement, according to this commenter, some degree of added stability augmentation would be required at a significant increase in cost and complexity.

The proposal explanation includes considerable detail as to why this dynamic stability requirement is for Category A rotorcraft only, how it relates to the Category A concept, and how it is necessary as a backup standard for the Category A IFR stability augmentation failure condition. Recently certificated Category A rotorcraft have met this standard at airspeeds above climb speed which is the proposed requirement. All recently certificated Category A rotorcraft may not have met this standard throughout their approved operating envelope as this commenter incorrectly implies the requirement to be.

In comparing the proposed dynamic stability requirements with those of fixed-wing airplanes, this second commenter states that following a stability augmentation failure, § 25.672 requires an airplane to meet only the controllability and maneuverability standards, not the stability or other flight characteristics standards, while the proposed IFR requirements for Part 29 (Notice 80–25 [45 FR 83424; December 18, 1980], which have been adopted without change in this area) include the requirement to meet all the flight characteristics of Subpart B of Part 29. This difference in the requirements between Part 25 and Part 29 results in airplanes not being required to comply with the dynamic stability standards after a stability augmentation system failure, while including this proposal in the Subpart B of Part 29 will require the Category A rotorcraft to continue to meet the standard after a failure when seeking IFR certification. The commenter is correct in that for the IFR failure case, not only is the specific standard for dynamic stability more strict but flight characteristics standards, in general, are more strict. Justifications for the Part 29 IFR requirements are contained in Notice 80–25 and in the preamble of the final rule (48 FR 4374; January 31, 1983). However, Notice 82–12 proposes a new § 29.672 which reads essentially the same as § 25.672; so for the Part 29 VFR case, a stability augmentation system failure does not increase the standard

compared to Part 25. For VFR certification under Part 29, the proposed requirement for only positive damping is less stringent than the heavily damped requirement in Part 25. Accordingly, the amendment is adopted as proposed.

Proposal 2–45. This proposal establishes lightning protection requirements in a new § 29.610. See Proposal 2–14 for comments and explanation. The amendment is adopted as proposed.

Proposal 2–46. One commenter agrees with the proposal to add a new § 29.671(c), stating that it "could add appreciably to the cost of manufacture and maintenance; however, . . . the cost may be justified." This commenter also notes that future "fly-by-wire" helicopters will require ground testing such as proposed.

A second commenter suggests the proposal be deleted stating that it would not fulfill the objectives desired by the FAA, that control interference and rigging checks cannot be conducted on the flight line, and that the quality of maintenance is not relevant to airworthiness regulatory action. It is likely that only significant control interference or misrigging would be discovered on a preflight check and these should have been detected on maintenance inspections; however, foreign objects in the control system and some partial failures could be detected. The quality of maintenance may not be relevant to type certification, but affording the pilot the capability to assure (within limits) that the aircraft is airworthy certainly is relevant. The recent trend towards use of composite rotor hubs with fewer hinges further restricts the allowable control inputs that can be made with the rotors turning and the rotorcraft on the ground. Therefore, unless some other alternative is provided, the pilot will have even less capability to determine airworthiness.

The second commenter further reviews the 13 accidents cited in the notice where it was stated that three might have been prevented by a method to check full control action before takeoff. This commenter states that none of these accidents would have been prevented by the proposal. This commenter cites one accident that occurred 3 to 4 miles from the departure point, and concludes that the proposed preflight check would not have been of merit. The same conclusion is reached in three other accidents where there was some period of flight before an accident. The FAA does not concur that a period of flight before an accident occurs proves that the proposed check is invalid. The critical control condition may not have been encountered until that point in the flight. It also should be noted that the six types of helicopters involved in these accidents were certificated in 1952, 1956, 1961, 1968, 1970, and 1976. This commenter concludes with the statement, "Thus, it appears that from Part 29 helicopter accident history, there is no justification to incorporate this NPRM." As explained in the notice, a few accidents "might" have been prevented. The available data are not sufficient for a positive conclusion either way. But there has been a sufficient number of control system failures and incidents to clearly indicate a problem area. In view of the catastrophic effects of a failure and the increasing complexity of control systems, improved preflight check capability is appropriate. Accordingly, the amendment is adopted as proposed.

Proposal 2–47. This is a parallel proposal to that contained in 2–15. See that proposal for explanation and analysis. A second commenter noted the typographical error that refers to § 29.67 which should be § 29.671; this is corrected and the amendment is adopted.

Proposal 2–48. Only one comment was received, and it agreed with the proposal.

Proposal 2–49. One commenter agrees with the proposal to revise § 29.729(f) and add a new § 29.729(g), but references his comment on Proposal 2–17. See the explanation for that proposal. The amendment is adopted as proposed.

Proposal 2–50. Only one comment was received, and it agrees with the proposal.

Proposal 2–51. One commenter agrees with the proposed change to § 29.771(b) to require consistency between pilot stations and states that the requirement should apply to Part 27 as well. This is beyond the scope of the notice. The amendment is adopted as proposed.

Proposal 2–52. One commenter agrees with the proposal to add a new § 29.779. A second commenter suggests that paragraph (a) should be worded, "Primary flight controls must operate . . ." stating that Proposal 2–48 defines primary controls as including the collective. A third commenter makes this same suggestion and adds a paragraph to state that other controls must operate forward or up to increase the related controlled parameter as it is related to the rotorcraft axis.

Including the word "primary" would exclude consideration of secondary controls. The third commenter's suggested paragraph would cover only a limited number of considerations that are best covered in guidance material.

A fourth commenter suggests that proposed paragraph (c) state that the normal landing gear control operate downward rather than just landing gear control, since emergency landing gear controls may require different actions. This suggestion is accepted and the amendment is adopted with this change.

Proposal 2–53. See explanation for Proposal 2–20. This amendment is adopted with the same change as identified for Proposal 2–20.

Proposal 2–54. No comments were received on the proposal to delete paragraphs (f) and (g) of § 29.811 and redesignate the remaining paragraphs. The proposal is adopted without change.

Proposal 2–55. One commenter agrees with the proposal. The FAA notes that the proposal was not clear in allowing the emergency lighting system to share common sources of illumination (bulbs) with the normal cabin lighting system provided the power supplies are independent. Therefore § 29.812(a) is revised as follows: "(a) A source of light with its power supply independent of the main lighting system must be installed to . . . ."

A second commenter suggests that the cockpit control device in proposed § 29.812(b) could have either "off," "on," and "armed" positions or "off" and a common "on/armed" positions. The control device in the cockpit needs an "on" position (sometimes referred to as "test") to allow the crew to preflight check the emergency lights and to turn on the emergency lights when the normal rotorcraft power is not interrupted. The FAA agrees that the wording of this paragraph could be improved; therefore, the second sentence of § 29.812(b) is revised as follows: "The cockpit control device must have an 'on,' 'off,' and 'armed' position so that when turned on at the cockpit or passenger compartment station or when armed at the cockpit station, the emergency lights will either illuminate or remain illuminated upon interruption of the rotorcraft's normal electric power."

A third commenter suggest that the exterior emergency lighting in proposed § 29.812(c) could be provided by internal or external sources with intensity measurements made with the normal exits open. The FAA concurs except the measurements would be made with only the emergency exits open. Therefore, the following is added: "The exterior emergency lighting may be provided by either interior or exterior sources with light intensity measurements made with the emergency exits open."

Further FAA review notes that the method of activating the exterior lighting

in § 29.812(c) is not stated. To correct this, proposed paragraph (c) will be reidentified as paragraph (b) and proposed paragraph (b) reidentified as paragraph (c). The first sentence of new paragraph (c) is revised to read: "Each light required by paragraph (a) or (b) of this section . . . ." The proposed amendment is adopted with the noted changes.

Proposal 2–56. Only one comment was received, and it agrees with the proposal.

Proposal 2–57. One commenter agrees with the proposal to add the requirement for a maximum allowable airspeed indicator and warning system for certain Category A rotorcraft in § 29.1303. A second commenter suggests that a radar altimeter should be mandatory for Part 29 helicopters and there should be criteria to establish maximum allowable vibration; these suggestions are beyond the scope of the notice.

A third commenter states that V_{NE} is defined as the never-exceed speed and that structural substantiations do not cover any intentional operation above V_{NE}, so that warning should operate at V_{NE} and above (with up to 5 knots below V_{NE} for production tolerance). This commenter suggests that establishing a normal operating speed limit, V_{NO}, below V_{NE} would solve the problem of nuisance operation of the warning at, or near, the allowable speed.

A fourth commenter suggests deleting the proposed change, stating that airspeeds greater than V_{NE} (up to at least 1.1 V_{NE}) are already considered in substantiating the structural adequacy and flight characteristics of the rotorcraft. This commenter further states that the added cost, weight, and complexity are not warranted by service experience, and questions whether a single system would suffice. In support of the question, this commenter explains the complexity in accounting for factors which can affect V_{NE}, such as power-on vs. power-off flight, gross weight, rotor speed, pressure altitude, and outside air temperature. This commenter leads the FAA to conclude that if it is this complex to determine V_{NE} (and, in fact, it is), then there is all the more reason to provide the pilot some assistance. As to the differences between the third and fourth commenters' interpretation of structural and flight verification above V_{NE}, (to 1.1 V_{NE}), the fourth commenter is correct in that intentional flight above V_{NE} is not permitted but the substantiation analysis and tests required do account for infrequent and inadvertent excursions beyond V_{NE}. Therefore, establishing a warning below V_{NE} is not necessary and requiring the warning to operate 3 knots above V_{NE} is appropriate to allow flight at V_{NE} without nuisance warnings. As rotorcraft have become larger and longer flights scheduled, fuel used has become a significant percentage of gross weight. To establish a V_{NE} based on maximum gross weight as is presently done precludes more economical operations at higher airspeeds as the flight progresses and the weight is reduced through fuel consumption. The proposed V_{NE} indicator would enhance the capability for this more economical operation.

The fourth commenter also suggests eliminating the warning device to be consistent with the suggestion to eliminate the V_{NE} indicator requirement, and further, that an aural warning could degrade the overall safety level by adding to the number of aural warnings now used; for example, fire, engine out, and landing gear. The third commenter also suggests that a warning light is sufficient. The proposal specifically states that the aural warning must differ distinctively from aural warnings used for other purposes so that there should be no confusion and the safety level would be enhanced. The proposal requires the V_{NE} indicator and warning only when other pilot cues are not provided; under these circumstances, a light, without aural warning, would more likely be overlooked. Accordingly, the amendment is adopted as proposed.

Proposal 2–58. One commenter agrees with the proposal. A second commenter assumes that proposed § 29.1309(b)(2)(i) would apply to the rotor and transmission systems since § 29.1309(a) refers to "this subchapter." This commenter's concern is that the proposed amendment would impose an extremely improbable failure requirement, defined as 1×10^{-9} or less per flight hour in Advisory Circular (AC) 29–2, Certification of Transport Category Rotorcraft, and AC 25.1309–1, System Design Analysis. The commenter states experience has shown the rotor and transmission systems failure rate to be only 1×10^{-6} at best. The FAA acknowledges that, as proposed, this section could be interpreted to include consideration of rotor and transmission systems, although the specific requirements for these systems are primarily contained in §§ 29.571, 29.901, 29.917, and 29.923. As noted in AC 29–2, § 29.1309 includes "but is not limited to electrical, pneumatic, and hydraulic power sources, associated distribution, and corresponding utilization systems," indicating, by these examples, the systems to which § 29.1309 is most applicable. There are other rotorcraft "systems" such as landing gear, propulsion, and fuselage that do not meet the 1×10^{-9} failure rate probability. To single out the rotor and transmission systems in this section is not appropriate. The general wording and concepts of this section have not caused problems in this area during past certifications.

The second commenter also notes that the term "improbable," as used in the proposed § 29.1309(b)(2)(ii) and as defined in AC 29–2, covers a failure rate range from 1×10^{-5} to 1×10^{-9}, which is too broad to be meaningful. This comment implies a need for an intermediate descriptive term and associated failure rate. Inclusion of such a term and associated failure rate would be more restrictive than the proposal since those systems to which the intermediate term would apply could be certificated under the proposal with a failure rate of only 10^{-5} per flight hour.

A third commenter questions the meaning and rationale for the phrases, "do not cause a hazard" (proposed § 29.1309(b)(1)), "prevent hazards" (proposed § 27.1309(b)), and "minimize hazards" (proposed § 27.1309(c)). In response to this comment, the FAA finds the phrase "do not cause a hazard" inappropriate since no difference in meaning is intended between the present § 29.1309(b) and proposed § 29.1309(b)(1) for Category B rotorcraft. Therefore, proposed § 29.1309(b)(1) is revised to read, "For Category B rotorcraft, the equipment, systems, and installations must be designed to prevent hazards to the rotorcraft if they malfunction or fail." The phrase "minimize hazards", as contrasted with "prevent hazards," allows (1) a level of safety that is compatible with single-engine rotorcraft, (2) less complexity, and (3) less costly systems and equipment. This lower level of safety for single-engine normal category rotorcraft is intended to permit practical designs that minimize weight and cost penalties.

A fourth commenter suggests combining proposed § 29.1309(b)(2) (i) and (ii) to state: "(2) For Category A rotorcraft, the equipment systems and installations must not prevent the continued safe flight and landing or cause injury to the occupants if they malfunction or fail, unless the malfunction or failure is shown to be extremely improbable." This suggestion would be more restrictive since it establishes the "extremely improbable" condition for a failure that only reduces the capability of the rotorcraft or crew. The FAA has also determined that injury to occupants is not a proper factor to be required in this analysis and this reference is deleted. This agrees with

Part 25 in this area. For this reason, the suggestion is beyond the scope of the notice. The commenter also refers to the National Transportation Safety Board (NTSB) Review of Rotorcraft Accidents 1977–1979 and quotes the document as showing that only 2.7 percent of the accidents were due to systems, instruments, and equipment. The FAA finds that during the 1977 to 1979 period, instrument-flight-equipped helicopters were a small percentage of the total helicopter fleet. This small percentage is not representative of the present fleet and it is projected to be even less representative each year. This is largely due to a rapid progression to increased system complexity from that of the 1977 to 1979 period. Systems such as electronic flight instrument systems (EFIS), fly-by-wire, and electronic fuel controls are now being presented for approval or are on the threshold of being presented. Loss of any one of these systems during instrument flight or loss of fly-by-wire or electronic fuel controls in any flight operation could be catastrophic. Therefore, the provisions of proposed § 29.1309(b)(2) (i) and (ii) are necessary to assure an adquate level of safety and are adopted.

The fourth commenter and a fifth commenter also suggest deleting the last sentence of the proposed § 29.1309(c) which requires designs to minimize crew errors which could create additional hazards. Both commenters state that it is too broad for clear application. While the requirement is broadly stated, there is a need to assure that installations such as identical switches, one frequently used and one infrequently used, such as fuel shutoff, are not placed side by side. It is impracticable to list all such poor design possibilities and the requirement is adopted as proposed.

The fourth and fifth commenters also suggest that the entire proposed § 29.1309(d) be deleted as it is "how to" which should only be in advisory circular material. This paragraph defines certain failure analysis criteria that can be stated clearly in the requirements. Accordingly, the amendment is adopted as proposed.

Proposal 2–59. This proposal would revise the airspeed system accuracy requirements of § 29.1323 to consider Category A and Category B flight profiles instead of differentiation by number of engines and to clarify that the requirements do not include instrument errors. One commenter states that since an airspeed error of not more than 5 knots is achievable, it should not be relaxed to 10 knots in a climb. Meeting the 10-knot error in a climb has been difficult for some rotorcraft and has resulted in complex systems or configurations requiring precise positioning of components. Retaining only a 5-knot error in a climb would not resolve these problems. The original conference proposal to allow a 15-knot error is an indication of the difficulties encountered in this area, but was considered to be excessive. A 10-knot error appears to be the best compromise between system complexity and safe, realistic indications. This same commenter suggests that the limit of a 3 percent error be deleted since an airspeed of 167 knots is required before it becomes a benefit. While 167 knots exceeds V_{NE} for most present-day rotorcraft, the proposal provides a design standard for the few present and any future rotorcraft with a V_{NE} greater than 167 knots.

A second commenter suggests that the minimum calibration speed in level flight be 30 knots rather than the proposed 20 knots because the difference is insignificant and does not improve safety or provide necessary information. The present rule requires single-engine rotorcraft systems to be calibrated at 20 knots and above, but requires calibration at 30 knots and above for multiengine rotorcraft. Amendment 29–3, effective February 25, 1968, changed the calibration requirement from 10 mph to the present 20 knots. Notice 82–12 explained the need for low-speed accuracy requirements for Category A operations. Accordingly, the amendment is adopted as proposed.

Proposal 2–60. This proposed change to § 29.1325(f) would relax the transport rotorcraft static systems accuracy of ±30 feet at all airspeeds to ±30 feet per 100 knots airspeed as currently required for transport airplanes. One commenter agrees with the proposal and states that Part 27 should reflect the same level of accuracy as that required by Part 29. There is no comparable requirement in Part 27 and one was not proposed. Therefore, this suggestion is beyond the scope of the notice. A second commenter notes that as written, the proposal would require zero altitude error at zero airspeed and suggests including the sentence from Part 25 which states that the error need not be less than ±30 feet. The FAA agrees and the amendment is changed to reflect that wording. A third commenter suggests changing the requirement to an allowable error of no more than ±30 feet below 100 knots or ±60 feet at higher speeds since there is no foreseeable need to consider speeds above 200 knots. However, the proposed amendment includes speeds above 200 knots and will not require a rule change if the unforeseeable does occur. Accordingly, the amendment is adopted with the change described.

Proposal 2–61. This proposal would clarify the design requirements for autopilots used in transport category rotorcraft and would add requirements in § 29.1329(e) for autopilots when interconnecting them with other systems. One commenter agrees with the proposal. A second commenter suggests that where an autopilot failure can result in hazardous effects on the control of the rotorcraft, a disengage control should be required to be on the cyclic control. Hazardous effects after a failure are precluded by compliance with the current § 29.1329(d). Requiring the disengaging control on the cyclic was discussed at the review conference and sufficient justification was provided to require only readily available disengagement. This decision is discussed in Notice 82–12, the major factor being that autopilot design must permit the pilot to control the rotorcraft first by overpowering a malfunctioning system, then disconnecting it. Where crew action is necessary to prevent a hazardous situation, this commenter suggests requiring a system to indicate the autopilot mode of operation and warning if it ceases to operate correctly. While the commenter's recommendation is beyond the scope of the notice, the suggestion for indicating the mode of operation is retained for possible future action. Accordingly, the amendment is adopted as proposed.

Proposal 2–62. This proposed revision would modify the requirement for a power adequacy indicator for each required flight instrument. It would define the point at which required power measurements must be made. One commenter agrees with the proposal. A second commenter suggests that the term "required flight instrument" in current § 29.1331(a) should be clarified and recommends using Part 25 as an example. The commenter notes that this is beyond the scope of the notice and recommends that Advisory Circular 29–2 address this question. Considering the definition of "instrument" in § 1.1, the FAA considers this section adequate as written but agrees that a discussion of the term "required" is appropriate for future revisions of AC 29–2. The amendment is adopted as proposed.

Proposal 2–63. The notice contained a typing error which identified the proposals for §§ 29.1333 and 29.1335 both as Proposals 2–63 and no Proposal 2–64. This did not appear to cause a problem since only one commenter

addressed these proposals and the comments were identified by section number, not proposal number. The commenter agrees with both proposals. The proposal for § 29.1333 would revise the requirements for instrument systems to reflect the increased complexity of instrumentation available, used, and necessary for transport rotorcraft to operate safely in the extreme range of operating environments to which they are now routinely exposed. The proposal for § 29.1335 would require Category B rotorcraft to meet the same electrical power source standards for required equipment and systems as are required for Category A rotorcraft. It further proposes wording as to the manner in which electrical power is maintained under fault conditions. The intent is to require two independent electrical power sources for essential load circuits for transport category rotorcraft. Accordingly, both amendments are adopted as proposed.

Proposal 2–65. This proposal would revise § 29.1357 by requiring Category B rotorcraft to have the overvoltage protection now required for Category A rotorcraft, by clarifying that all parts of a single essential system may be protected by the same circuit protective device, and by specifically stating under what circumstances automatic reset circuit breakers may be used. One commenter agrees with the proposal. A second commenter agrees with the proposal, but requests the term "essential to safety of flight" be well defined in advisory Circular 29–2. This will be done. The amendment is adopted as proposed.

Proposal 2–66. Only one comment was received and it agreed with the proposal.

Proposal 2–67. This proposal would change the wording of § 29.1525 to clarify the requirements for approved kinds of operation without affecting the actual certification process. One commenter agrees with the proposal. A second commenter suggests that the list of kinds of operations be expanded to include all typical kinds and to require, by § 29.1583(e), the flight manual to include the appropriate compliance status with § 29.1525. The proposal lists, as examples, all such kinds of operations except external-load carrying that are applicable to certification. Specific uses, such as passenger-carrying, power-line patrol, logging operations, etc., are huge in number and not a basic certification requirement. Section 29.1583(e) presently requires that the flight manual list the approved kinds of operations. Since kinds of operations are defined by § 29.1525, there is no need to repeat them in § 29.1583. Accordingly, the amendment is adopted as proposed.

Proposal 2–68. This proposed revision to § 29.1555(a) would remove flight controls and other obvious control functions from the marking requirements for cockpit controls. The proposed change to § 29.1555(e) would require a placard stating the maximum landing gear operating speed (V_{LO}) in rotorcraft with retractable gear. One commenter agrees with the proposal. A second commenter proposes deleting the requirement for a (V_{LO}) placard near the landing gear control. This is discussed under Proposal 2–28. The same change to require a limit speed placard in clear view of the pilot is included in this amendment. A third commenter suggests that a rotorcraft could have a (V_{LE}) different from (V_{LO}) and that this should also be placarded. Where (V_{LE}) and (V_{LO}) are different, the landing gear operating speed normally is less than the landing gear extended speed. Requiring only (V_{LO}) would be the most conservative, but would not preclude placards of other speeds where appropriate. This third commenter also suggests that standardization (shape and color) of controls should be added to the rule with detail information in Advisory Circular 29–2. This suggestion is beyond the scope of this notice. The amendment is adopted with the change identified in Proposal 2–28.

Proposal 2–69. This proposal would remove the requirement for a placard which states that the rotorcraft must comply with the operating limitations contained in the rotocraft flight and maintenance manuals. The required placard, containing over 50 words, was redundant to requirements specified elsewhere in the certification and operating rules. A much shorter placard was proposed. One commenter supports the proposal. A second commenter recommends the limitations placard reference the flight manual for information on limits. This same comment was made for Proposal 2–29; see that proposal for explanation. The amendment is adopted without change.

Proposal 2–70. This proposal implements an existing practice by specifying ambient temperature as an operating limitation. The proposal also adds the maximum allowable wind for safe operation near the ground as a limitation for transport Category A rotorcraft. One commenter agrees with the proposal but states that the explanation for excluding Category B rotorcraft from the maximum allowable wind limitation is not complete and the information should be included in the performance section of the flight manual. Proposal 2–72 does require the maximum demonstrated wind for safe opration near the ground as performance information for Category B rotorcraft. A second commenter suggests that the proposal be expanded to indicate more clearly that the sideward and rearward flight limits for crosswinds and tailwinds established by § 29.143(c) are the limits of concern. Section 29.143(c) is a controllability and maneuverability requirement. However, such factors as engine stall or surge due to inlet distortion, rotorcraft attitudes that could influence the unusable fuel quantity, and structural considerations also have been encountered as limiting conditions for maximum winds. Although these examples influenced the limits established for compliance with § 29.143(c), the controllability and maneuverability, in the narrowest sense, were not the limiting factors. Therefore, it is not appropriate to specify that this proposal is concerned only with § 29.143(c).

A third commenter states that the proposal seems appropriate, but goes on to state that the explanation implies restrictions to operations which would not be practicable or acceptable if operating to an unmanned site where wind and temperature information are not available. Under present VFR operating rules, when only area weather information is provided before departure, the pilot is responsible for evaluating the destination weather upon arrival. Under IFR operating rules, the pilot must be provided destination weather before beginning an instrument meteorological condition (IMC) approach. Therefore, the concerns of the third commenter are valid only under IMC where consideration must be given to several other IFR requirements that are more restrictive than those resulting from this proposal. The amendment is adopted as proposed.

Proposal 2–71. Only one comment was received and it agrees with the proposal.

Proposal 2–72. Three commenters suggest that the proposed § 29.1587 restriction on showing performance information beyond any operating limit should be deleted. The first of these commenters states that performance information beyond operating limits is used to calculate the effect of optional equipment. The second and third of these commenters give examples where the maximum allowable gross weight is greater with an external load. Two of these commenters suggest shading or other methods to indicate limits. These techniques have merit and have been used on recently certificated rotorcraft;

however, some proposed manuals have been submitted to FAA with data that greatly exceed several limits and with little or no indication of the limits. The wording of the amendment is changed as follows:

"Flight manual performance information which exceeds any operating limitation may be shown only to the extent necessary for presentation clarity or to determine the effects or approved optional equipment or procedures. When data beyond operating limits are show, the limits must be clearly indicated."

A fourth commenter suggests that instead of requiring the maximum demonstrated wind for starting and stopping the rotors in proposed § 29.1587(a)(4) and (b)(4), the maximum recommended wind should be required. Difficulty in obtaining the needed wind conditions for demonstration is cited as the major objection to the proposed wording. A fifth commenter states that even though the maximum demonstrated wind would appear under performance information, it would be interpreted as a limit. A sixth commenter suggest that a minimum of 17-knots wind, to be compatible with the control and manuverability requirements, be required for the demonstration.

Guidance on rotor characteristics during starting and stopping is very desirable. However, there are so many variables to be considered that significant questions are raised on the capability to develop and verify adequate information without large and expensive analysis and test programs. A few of the wind-related variables that must be considered are wind velocity, gust magnitude, gust frequency, relative direction of the wind, and turbulence—natural and object induced. Imposed upon the wind factors are the rotor design, aerodynamic characterists, and control techniques. Demonstrations (or recommendations) that address only a steady wind could be misleading. The FAA considers information on rotor characteristics during start and stop as highly desirable and encourages the manufacturers to provide as much guidance as feasible. However, in view of the difficulty and expense that would be required to develop and evaluate even an absolute minimum of data, the proposal to require the maximum wind for starting and stopping rotors is withdrawn.

A seventh commenter suggests that the last sentence of proposed § 29.1587(a) (5) and (6) be deleted. These sentences state that the distances determined for takeoff under § 29.59 and landing under §§ 29.75 and 29.77 must be used in establishing takeoff and landing field lenghts. The commenter is correct in stating that these sentences are unnecessary; therefore, they are deleted.

An eighth commenter objects to proposed § 29.1587(b)(6) which requires glide distance as a function of altitude. This commenter states that this is useless information and suggests that the speeds for minimum rate of descent and best glide angle with the associated glide angles be required. Requirements to provide the speeds associated with minimum rate of descent and best glide angle are included in § 29.1585 (Proposal 2–71). As discussed in the notice, glide distance as a function of altitude is more readily usable information than just glide angle. Accordingly, this portion of the amendment is adopted as proposed.

A ninth commenter suggests that out-of-ground-effect hover performance information should be required for all transport category rotorcraft. This is beyond the scope of the notice.

Amendment 29–21, effective after publication of Notice 82–12, added a new § 29.1587(b)(6). Therefore, the proposal is edited as necessary and is adopted as discussed.

Proposal 2–73. One commenter suggests that the proposed title of § 91.31 be changed to "Civil aircraft operating limitations." This section includes the requirements for markings and placards in older aircraft that do not require flight manuals. Therefore, the title proposed in the notice is more descriptive of the section. FAA review notes that the proposed wording could be interpreted to require compliance with only flight manual, marking, or placard operating limitations. Experimental aircraft, which includes amateur-built aircraft, do not require a flight manual, markings, or placards, but operating limitations normally are issued with the airworthiness certificate. To provide for this example, or any other similar case, the last phrase is revised to read: ", or as otherwise prescribed by the certificating authority of the country of registry," and the amendment is adopted.

Economic Summary

The FAA conducted an evaluation of the economic impact of these regulatory changes. A copy of the evaluation has been placed in the docket.

The assumptions used in preparing the economic impact estimates of the changes to the certification regulations are derived from earlier cost impact assessments of the proposals contained in Notice 82–12. Notice 82–12 invited public comments concerning technical and operational considerations and economic impact assumptions as they apply to rotorcraft performance, flight characteristics, systems, and equipment. Comments on the proposal were submitted by domestic and foreign manufacturer and operator trade associations. The majority of the comments recommend minor technical modifications and editorial clarifications. A number of comments, however, disagree with the economic impact estimates of various proposals. The FAA has evaluated the public comments and made final determinations regarding their impact. With only one exception, the FAA finds that the proposals determined to have an economic impact at the NPRM stage of rulemaking will also have an economic impact if the rule is adopted. The one exception is that the estimated savings resulting from § 29.175 is reduced from $50,000 per certification to a negligible amount as a result of industry comments and subsequent FAA technical amendments.

The five amendments determined to have an economic impact are related to limiting height-speed envelope, lightning protection for Parts 27 and 29 rotorcraft, providing of a means that will allow the pilot to determine that full control authority is available prior to flight for transport category rotorcraft, and adding an aural, never-exceed-speed indicator as a requirement for Part 29 certification. The evaluation of these amendments is summarized in Table 1.

TABLE 1.—COSTS AND SAVINGS OF NPRM 2 CHANGES HAVING ECONOMIC IMPACTS

Proposal	Cost (savings)	Benefits
27.79 **Limiting Height-Speed Envelope.** Revision of the weight requirements needed to establish performance at various altitudes.	(50 thousand per certification)	Reduction of Flight testing time by 10 hours and demonstration weight by approximately 15% at altitudes above sea level.
29.671 **Control Systems: General.** The provisions of a means performing a control command verification procedure prior to flight in rotorcraft with boosted flight control systems.	5.2 million total incurred for first 3 production years.[1]	Benefit not quantified. Undetermined benefits are expected to accrue to operators and travelers by the prevention of accidents attributed to flight control system failures.
27.610 **Lightning Protection.** (See 29.610.)	(See 29.610)	(See 29.610).

TABLE 1.—COSTS AND SAVINGS OF NPRM 2 CHANGES HAVING ECONOMIC IMPACTS—Continued

Proposal	Cost (savings)	Benefits
29.610 **Lightning Protection.** The protection of digital/electronic avionic and flight control systems against the disruptive effects of lightning strikes. The rule places special emphasis on rotorcraft with composite material primary and secondary flight structures.	The FAA requested industry comments on the cost of the lightning protection requirements of this section. Commentors did not provide cost data analysis required on the design and data analysis required to protect advanced digital avionics flight control systems will be funished by a major FAA, NASA, and DOD task force research effort. The results of this study are expected to minimize the cost impact and the FAA believes that the rule will be cost beneficial.	The FAA believes that benefits will accrue to operators and travelers by the prevention of accidents attributed to the catastrophic effects of lightning strikes on critical avionics, flight control systems, structures, and fuel systems.
29.1303 **Flight and Navigation Instruments**	$1.1 million total incurred for first three production years, including maintenance costs.[2]	The provision of maxium allowable airspeed indicating system is expected to prevent fatigue failure accidents attributed to overspeed conditions. On the basis of the $2.0 million average cost of fatigue failure accidents, the amendment would have to prevent less than one accident to justify its costs.

[1] Cost estimates are based on the addition of an electronic motor to allow full control movement prior to flight. The FAA did not receive comments on the cost of implementing alternative means of complying with the proposal.

[2] The cost estimate is based on an instrumentation developed by one manufacturer to provide V_{YE} measurement and warning capability and to perform a power assurance check. The costs shown here are those attributable to the V_{YE} indicator and V_{NE} overspeed warning device. The cost shown should provide an instrument that meets all safety aspects and gives a true speed measurement under all factors which can use V_{NE} to vary.

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the amendments to Parts 1, 27, 29, and 91 contained in this final rule, at promulgation, will not have a significant economic impact on a substantial number of small entities. The RFA requires agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities." The FAA recently adopted criteria and guidelines for rulemaking officials to apply when determining if a proposed or existing rule has a significant economic impact on a substantial number of small entities and guidance for the conduct of regulatory flexibility analyses and reviews. The FAA small entity size standards criteria define a small helicopter manufacturer as an independently owned and managed firm having fewer than 75 employees. Under the FAA size standard criteria, only one manufacturer subject to the certification changes to Parts 1, 27, 29, and 91 has fewer than 75 employees. Table 2 shows domestic helicopter manufacturers and designation as to size. Accordingly, the amendments to Parts 1, 27, 29, and 91 contained in this final rule will not impact a substantial number of small entities.

There are no known diseconomies of scale associated with the anticipated marginal increase in certification costs. This change to the certification rules for Parts 27 and 29 helicopter manufacturers is not perceived to raise any barrier to entry into this market for small manufacturers.

TABLE 2.—PARTS 27 AND 29 ROTORCRAFT MANUFACTURERS

	Firm size
Part 27 Manufacturers:	
Brantly-Hynes Helicopters, Inc	Small.
Enstrom Helicopters Corp	Large.
Hiller Aviation	Do.
Hughes Helicopters, Inc	Do.
Kaman Aerospace	Do.
Robinson Helicopters	Do.
Part 29 Manufacturers:	
Bell Helicopter Textron, Inc	Do.
Boeing Vertol Company	Do.
Sikorsky Aircraft—United Technologies	Do.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 2120-0018.

List of Subjects

14 CFR Part 1

Airmen, Flights, Aircraft pilots, Pilots, Transportation, Air Safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Helicopters, Rotorcraft.

14 CFR Parts 27 and 29

Air transportation, Aircraft, Aviation safety, Safety, Tires, Rotorcraft.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Pilots, Air transportation, Airworthiness directives and standards.

Adoption of the Amendment

Accordingly, Parts 1, 27, 29, and 91 of the Federal Aviation Regulations (14 CFR Parts 1, 27, 29, and 91) are amended as follows, effective December 6, 1984.

PART 1—DEFINITIONS AND ABBREVIATIONS

1. By amending § 1.1 by adding the following definitions after the definitions of "Clearway" and "Takeoff power," respectively:

§ 1.1 General definitions.

* * * * *

"Climbout Speed," with respect to rotorcraft, means a referenced airspeed which results in a flight path clear of the height-velocity envelope during initial climbout.

* * * * *

"Takeoff Safety Speed" means a referenced airspeed obtained after lift-off at which the required one-engine-inoperative climb performance can be achieved.

* * * * *

2. By amending § 1.2 to add a definition for "V_{TOSS}" after "V_{SI}" as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

"V_{TOSS}" means takeoff safety speed for Category A rotorcraft.

* * * * *

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

§ 27.21 [Amended]

3. By amending § 27.21 by removing the paragraph designator "(a)" in § 27.21(a); by changing paragraph designators (a)(1) and (a)(2) to (a) and (b), respectively; and by removing paragraph (b).

4. By amending § 27.45 by adding a new paragraph (f) to read as follows:

§ 27.45 General.

* * * * *

(f) For turbine-engine-powered rotorcraft, a means must be provided to permit the pilot to determine prior to takeoff that each engine is capable of

developing the power necessary to achieve the applicable rotorcraft performance prescribed in this subpart.

5. By adding a new § 27.71 to read as follows:

§ 27.71 Glide performance.

For single-engine helicopters and multiengine helicopters that do not meet the Category A engine isolation requirements of Part 29 of this chapter, the minimum rate of descent airspeed and the best angle-of-glide airspeed must be determined in autorotation at—

(a) Maximum weight; and

(b) Rotor speed(s) selected by the applicant.

6. By revising § 27.79(a)(2) to read as follows:

§ 27.79 Limiting height-speed envelope.

(a) * * *

(2) Weight, from the maximum weight (at sea level) to the lesser weight selected by the applicant for each altitude covered by paragraph (a)(1) of this section. For helicopters, the weight at altitudes above sea level may not be less than the maximum weight or the highest weight allowing hovering out of ground effect which is lower.

* * * * *

7. By amending § 27.141 by revising paragraphs (a) and (a)(1) to read as follows:

§ 27.141 General.

* * * * *

(a) Except as specifically required in the applicable section, meet the flight characteristics requirements of this subpart—

(1) At the altitudes and temperatures expected in operation;

* * * * *

8. By amending § 27.143 by removing the word "and" in paragraph (c)(2); by inserting "; and" at the end of (c)(3); and by adding a new paragraph (c)(4) to read as follows:

§ 27.143 Controllability and maneuverability.

* * * * *

(c) * * *

(4) Altitude, from standard sea level conditions to the maximum altitude capability of the rotorcraft or 7,000 feet, whichever is less.

* * * * *

9. By adding a new § 27.151 to read as follows:

§ 27.151 Flight controls.

(a) Longitudinal, lateral, directional, and collective controls may not exhibit excessive breakout force, friction, or preload.

(b) Control system forces and free play may not inhibit a smooth, direct rotorcraft response to control system input.

10. By revising § 27.161(a) to read as follows:

§ 27.161 Trim control.

* * * * *

(a) Must trim any steady longitudinal, lateral, and collective control forces to zero in level flight at any appropriate speed; and

* * * * *

11. By revising § 27.173 to read as follows:

§ 27.173 Static longitudinal stability.

(a) The longitudinal control must be designed so that a rearward movement of the control is necessary to obtain a speed less than the trim speed, and a forward movement of the control is necessary to obtain a speed more than the trim speed.

(b) With the throttle and collective pitch held constant during the maneuvers specified in § 27.175 (a) through (c), the slope of the control position versus speed curve must be positive throughout the full range of altitude for which certification is requested.

(c) During the maneuver specified in § 27.175(d), the longitudinal control position versus speed curve may have a negative slope within the specified speed range if the negative motion is not greater than 10 percent of total control travel.

12. By revising § 27.175(d) to read as follows:

§ 27.175 Demonstration of static longitudinal stability.

* * * * *

(d) *Hovering.* For helicopters, the longitudinal cyclic control must operate with the sense and direction of motion prescribed in § 27.173 between the maximum approved rearward speed and a forward speed of 17 knots with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Power required to maintain an approximate constant height in ground effect;

(4) The landing gear extended; and

(5) The helicopter trimmed for hovering.

13. By adding a new § 27.177 to read as follows:

§ 27.177 Static directional stability.

Static directional stability must be positive with throttle and collective controls held constant at the trim conditions specified in § 27.175 (a) and (b). This must be shown by steadily increasing directional control deflection for sideslip angles up to ±10° from trim. Sufficient cues must accompany sideslip to alert the pilot when approaching sideslip limits.

14. By adding a new § 27.610 to read as follows:

§ 27.610 Lightning protection.

(a) The rotorcraft must be protected against catastrophic effects from lightning.

(b) For metallic components, compliance with paragraph (a) of this section may be shown by—

(1) Electrically bonding the components properly to the airframe; or

(2) Designing the components so that a strike will not endanger the rotorcraft.

(c) For nonmetallic components, compliance with paragraph (a) of this section may be shown by—

(1) Designing the components to minimize the effect of a strike; or

(2) Incorporating acceptable means of diverting the resulting electrical current so as not to endanger the rotorcraft.

15. By adding a new § 27.672 to read as follows:

§ 27.672 Stability augmentation, automatic, and power-operated systems.

If the functioning of stability augmentation or other automatic or power-operated systems is necessary to show compliance with the flight characteristics requirements of this Part, such systems must comply with § 27.671 of this Part and the following:

(a) A warning which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system which could result in an unsafe condition if the pilot is unaware of the failure. Warning systems must not activate the control systems.

(b) The design of the stability augmentation system or of any other automatic or power-operated system must allow initial counteraction of failures without requiring exceptional pilot skill or strength by overriding the failure by movement of the flight controls in the normal sense and deactivating the failure system.

(c) It must be shown that after any single failure of the stability

augmentation system or any other automatic or power-operated system—

(1) The rotorcraft is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations;

(2) The controllability and maneuverability requirements of this Part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and rotorcraft configurations) which is described in the Rotorcraft Flight Manual; and

(3) The trim and stability characteristics are not impaired below a level needed to permit continued safe flight and landing.

16. By adding a new § 27.673 to read as follows:

§ 27.673 Primary flight control.

Primary flight controls are those used by the pilot for immediate control of pitch, roll, yaw, and vertical motion of the rotorcraft.

17. By adding a new § 27.729 to read as follows:

§ 27.729 Retracting mechanism.

For rotorcraft with retractable landing gear, the following apply:

(a) *Loads.* The landing gear, retracting mechansim, wheel-well doors, and supporting structure must be designed for—

(1) The loads occurring in any maneuvering condition with the gear retracted;

(2) The combined friction, inertia, and air loads occurring during retraction and extension at any airspeed up to the design maximum landing gear operating speed; and

(3) The flight loads, including those in yawed flight, occurring with the gear extended at any airspeed up to the design maximum landing gear extended speed.

(b) *Landing gear lock.* A positive means must be provided to keep the gear extended.

(c) *Emergency operation.* When other than manual power is used to operate the gear, emergency means must be provided for extending the gear in the event of—

(1) Any reasonably probable failure in the normal retraction system; or

(2) The failure of any single source of hydraulic, electric, or equivalent energy.

(d) *Operation tests.* The proper functioning of the retracting mechanism must be shown by operation tests.

(e) *Position indicator.* There must be a means to indicate to the pilot when the gear is secured in the extreme positions.

(f) *Control.* The location and operation of the retraction control must meet the requirements of §§ 27.777 and 27.779.

(g) *Landing gear warning.* An aural or equally effective landing gear warning device must be provided that functions continuously when the rotorcraft is in a normal landing mode and the landing gear is not fully extended and locked. A manual shutoff capability must be provided for the warning device and the warning system must automatically reset when the rotorcraft is no longer in the landing mode.

18. By revising the introductory paragraph to § 27.735 to read as follows:

§ 27.735 Brakes.

For rotorcraft with wheel-type landing gear, a braking device must be installed that is—

* * * * *

19. By adding a new § 27.779 to read as follows:

§ 27.779 Motion and effect of cockpit controls.

Cockpit controls must be designed so that they operate in accordance with the following movements and actuation:

(a) Flight controls, including the collective pitch control, must operate with a sense of motion which corresponds to the effect on the rotorcraft.

(b) Twist-grip engine power controls must be designed so that, for lefthand operation, the motion of the pilot's hand is clockwise to increase power when the hand is viewed from the edge containing the index finger. Other engine power controls, excluding the collective control, must operate with a forward motion to increase power.

(c) Normal landing gear controls must operate downward to extend the landing gear.

20. By revising the title and § 27.785 to read as follows:

§ 27.785 Seats, berths, safety belts, and harnesses.

(a) Each seat, berth, safety belt, harness, and adjacent part of the rotorcraft, at each station designated for occupancy during takeoff and landing, must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces, and must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in § 27.561.

(b) Each occupant must be protected from head injury by—

(1) For each crewmember seat and each seat beside a crewmember front seat, a safety belt and harness that will prevent the head from contacting any injurious object; and

(2) For each seat not covered under paragraph (b)(1)—

(i) A safety belt plus the absence of injurious objects within striking radius of the head;

(ii) A safety belt plus a shoulder harness that will prevent the head from contacting any injurious object; or

(iii) A safety belt plus an energy-absorbing rest that will support the arms, shoulders, head, and spine.

(c) Each pilot's seat must have a combined safety belt and shoulder harness with a single-point release that permits the pilot, when seated with safety belt and sholder harness fastened, to perform all of the pilot's necessary functions. There must be a means to secure belts and harnesses, when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

(d) If seat backs do not have a firm handhold, there must be hand grips or rails along each aisle to enable the occupants to steady themselves while using the aisle in moderately rough air.

(e) Each projecting object that could injure persons seated or moving about in the rotorcraft in normal flight must be padded.

(f) Each seat and its supporting structure must be designed for an occupant weight of 170 pounds, considering the maximum load factors, inertia forces, and reactions between the occupant, seat, and safety belt or harness corresponding with the applicable flight and ground-load conditions, including the emergency landing conditions of § 27.561. In addition—

(1) Each pilot seat must designed for the reactions resulting from the application of the pilot forces prescribed in § 27.397; and

(2) The inertia forces prescribed in § 27.561 must be multiplied by a factor of 1.33 in determining the strength of the attachment of—

(i) Each seat to the structure; and

(ii) Each safety belt or harness to the seat or structure.

(g) When the safety belt and shoulder harness are combined, the rated strength of the safety belt and shoulder harness may not be less than that corresponding to the inertia forces specified in § 27.561, considering the occupant weight of at least 170 pounds, considering the dimensional characteristics of the restraint system installation, and using a distribution of at least 60 percent load to the safety belt and at least 60 percent load to the shoulder harness. If the safety belt is capable of being used

without the shoulder harness, the inertia forces specified must be met by the safety belt alone.

(h) When a headrest is used, the headrest and its supporting structure must be designed to resist the inertia forces specified in § 27.561, with a 1.33 fitting factor and a head weight of at least 13 pounds.

§ 27.807 [Amended]

21. By amending § 27.807(a) by removing the last sentence.

22. By amending § 27.1309 by removing the words "*Functioning and reliability.*" in paragraph (a); by revising paragraph (b); and by adding new paragraphs (c) and (d) to read as follows:

§ 27.1309 Equipment, systems, and installations.

* * * * *

(b) The equipment, systems, and installations of a multiengine rotorcraft must be designed to prevent hazards to the rotorcraft in the event of a probable malfunction or failure.

(c) The equipment, systems, and installations of single-engine rotorcraft must be designed to minimize hazards to the rotorcraft in the event of a probable malfunction or failure.

(d) In showing compliance with paragraph (a), (b), or (c) of this section, the effects of lightning strikes on the rotorcraft must be considered in accordance with § 27.610.

23. By adding a new § 27.1329 to read as follows:

§ 27.1329 Automatic pilot system.

(a) Each automatic pilot system must be designed so that the automatic pilot can—

(1) Be sufficiently overpowered by one pilot to allow control of the rotorcraft; and

(2) Be readily and positively disengaged by each pilot to prevent it from interfering with control of the rotorcraft.

(b) Unless there is automatic synchronization, each system must have a means to readily indicate to the pilot the alignment of the actuating device in relation to the control system it operates.

(c) Each manually operated control for the system's operation must be readily accessible to the pilots.

(d) The system must be designed and adjusted so that, within the range of adjustment available to the pilot, it cannot produce hazardous loads on the rotorcraft or create hazardous deviations in the flight path under any flight condition appropriate to its use, either during normal operation or in the event of a malfunction, assuming that corrective action begins within a reasonable period of time.

(e) If the automatic pilot integrates signals from auxiliary controls or furnishes signals for operation of other equipment, there must be positive interlocks and sequencing of engagement to prevent improper operation.

§ 27.1413 [Amended]

24. By amending § 27.1413 by removing paragraphs (a) and (b) and the paragraph designator "(c)" only of paragraph (c).

25. By amending § 27.1505 by removing the word "or" at the end of paragraph (a)(2)(i); be removing the period from the end of paragraph (a)(2)(ii) and adding "; or" in its place; and by adding a new paragraph (a)(2)(iii) to read as follows:

§ 27.1505 Never-exceed speed.

(a) * * *

(2) * * *

(iii) 0.9 times the maximum speed substantiated for advancing blade tip mach number effects.

* * * * *

§ 27.1519 [Amended]

26. By amending § 27.1519 by removing the paragraph "(a)" designation and by removing paragraph (b) in its entirety.

27. By revising § 27.1525 to read as follows:

§ 27.1525 Kinds of operations.

The kinds of operations (such as VFR, IFR, day, night, or icing) for which the rotorcraft is approved are established by demonstrated compliance with the applicable certification requirements and by the installed equipment.

28. By revising § 27.1555(a) and adding a new paragraph (e) to read as follows:

§ 27.1555 Control markings.

(a) Each cockpit control, other than primary flight controls or control whose function is obvious, must be plainly marked as to its function and method of operation.

* * * * *

(e) For rotorcraft incorporating retractable landing gear, the maximum landing gear operating speed must be displayed in clear view of the pilot.

29. By revising § 27.1559 to read as follows:

§ 27.1559 Limitations placard.

There must be a placard in clear view of the pilot that specifies the kinds of operations (such as VFR, IFR, day, night, or icing) for which the rotorcraft is approved.

30. By revising § 27.1585(a) and adding a new paragraph (g) to read as follows:

§ 27.1585 Operating procedures.

(a) Parts of the manual containing operating procedures must have information concerning any normal and emergency procedures and other information necessary for safe operation, including takeoff and landing procedures and associated airspeeds. The manual must contain any pertinent information including—

(1) The kind of takeoff surface used in the tests and each appropriate climbout speed; and

(2) The kind of landing surface used in the tests and appropriate approach and glide airspeeds.

* * * * *

(g) The airspeeds and rotor speeds for minimum rate of descent and best glide angle as prescribed in § 27.71 must be provided.

31. By amending § 27.1587 by revising paragraph (a)(2)(ii); by removing the period at the end of paragraph (a)(2)(iii) and inserting"; and" in its place; by adding a new paragraph (a)(2)(iv); by adding the word "and" after the semicolon at the end of paragraph (b)(1); by removing paragraph (b)(2); and by redesignating paragraph (b)(3) as (b)(2) as follows:

§ 27.1587 Performance information.

(a) * * *

(2) * * *

(ii) The maximum safe wind for operation near the ground. If there are combinations of weight, altitude, and temperature for which performance information is provided and at which the rotorcraft cannot land and takeoff safely with the maximum wind value, those portions of the operating envelope and the appropriate safe wind conditions shall be identified in the flight manual;

(iii) * * *

(iv) Glide distance as a function of altitude when autorotating at the speeds and conditions for minimum rate of descent and best glide as determined in § 27.71.

* * * * *

PART 29–AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

§ 29.21 [Amended]

32. By amending § 29.21 by removing paragraph (b); by removing the designator "(a)" in § 29.21(a); and by redesignating paragraphs (a)(1) and (a)(2) as (a) and (b), respectively.

33. By amending § 29.45 by revising (b)(2) and (c)(2) and by adding a new paragraph (f) to read as follows:

§ 29.45 General.

* * * * *

(b) * * *

(2) For the approved range of atmospheric variables.

(c) * * *

(2) The power absorbed by the accessories and services at the values for which certification is requested and approved.

* * * * *

(f) For turbine-engine-power rotorcraft, a means must be provided to permit the pilot to detemine prior to takeoff that each engine is capable of developing the power necessary to achieve the applicable rotorcraft performance prescribed in this subpart.

34. By revising § 29.59(b) and introductory paragraph (c) to read as follows:

§ 29.59 Takeoff path: Category A.

* * * * *

(b) The rejected takeoff path must be established with not more than takeoff power on each engine from the start of takeoff to the critical decision point, at which point it is assumed that the critical engine becomes inoperative and that the rotorcraft is brought to a safe stop.

(c) The takeoff climbout path must be established with not more than takeoff power on each engine from the start of takeoff to the critical decision point, at which point it is assumed that the critical engine becomes inoperative and remains inoperative for the rest of the takeoff. The rotorcraft must be accelerated to achieve the takeoff safety speed and a height of 35 feet above the ground or greater and the climbout must be made—

* * * * *

35. By amending § 29.67 by revising paragraphs (a)(1), (a)(1)(ii), (a)(2), and (a)(2)(ii) to read as follows:

§ 29.67 Climb: One-engine inoperative.

(a) * * *

(1) The safety rate of climb without ground effect must be at least 100 feet per minute for each weight, altitude, and temperature for which takeoff and landing data are to be scheduled, with—

(i) * * *

(ii) The most unfavorable center of gravity;

* * * * *

(2) The steady rate of climb without ground effect must be at least 150 feet per minute 1,000 feet above the takeoff and landing surfaces for each weight, altitude, and temperature for which takeoff and landing data are to be scheduled, with—

(i) * * *

(ii) The most unfavorable center of gravity;

* * * * *

36. By amending § 29.77 by removing the word "and" at the end of paragraph (a); by removing the period at the end of paragraph (b) and inserting "; and" in its place; and by adding a new paragraph (c) to read as follows:

§ 29.77 Balked landing: Category A.

* * * * *

(c) The rotorcraft does not descend below 35 feet above the landing surface in the maneuver described in paragraph (b) of this section.

37. By amending § 29.141 by revising introductory paragraph (a) and (a)(1) to read as follows:

§ 29.141 General.

* * * * *

(a) Except as specifically required in the applicable section, meet the flight characteristics requirements of this subpart—

(1) At the approved operating altitudes and temperatures;

* * * * *

38. By revising § 29.143(c) (1) and (2) and by adding (c)(3) to read as follows:

§ 29.143 Controllability and maneuverability.

* * * * *

(c) * * *

(1) Critical weight;

(2) Critical center of gravity; and

(3) Critical rotor r.p.m.

* * * * *

39. By adding a new § 29.151 to read as follows:

§ 29.151 Flight controls.

(a) Longitudinal, lateral, directional, and collective controls may not exhibit excessive breakout force, friction, or preload.

(b) Control system forces and free play may not inhibit a smooth, direct rotorcraft response to control system input.

40. By revising § 29.161(a) to read as follows:

§ 29.161 Trim control.

* * * * *

(a) Must trim any steady longitudinal, lateral, and collective control forces to zero in level flight at any appropriate speed; and

* * * * *

41. By revising § 29.173 to read as follows:

§ 29.173 Static longitudinal stability.

(a) The longitudinal control must be designed so that a rearward movement of the control is necessary to obtain a speed less than the trim speed, and a forward movement of the control is necessary to obtain a speed more than the trim speed.

(b) With the throttle and collective pitch held constant during the maneuvers specified in § 29.175 (a) through (c), the slope of the control position versus speed curve must be positive throughout the full range of altitude for which certification is requested.

(c) During the maneuver specified in § 29.175(d), the longitudinal control position versus speed curve may have a negative slope within the specified speed range if the negative motion is not greater than 10 percent of total control travel.

42. By amending § 29.175 by revising introductory paragraphs (a) and (c) and the entire paragraph (d) to read as follows:

§ 29.175 Demonstration of static longitudinal stability.

(a) *Climb.* Static longitudinal stability must be shown in the climb condition at speeds from 0.85 V_Y, or 15 knots below V_Y, whichever is less, to 1.2 V_Y or 15 knots above V_Y, whichever is greater, with—

* * * * *

(c) *Autorotation.* Static longitudinal stability must be shown in autorotation at airspeeds from 0.5 times the speed for minimum rate of descent, or 0.5 times the maximum range glide speed for Category A rotorcraft, to V_{NE} or to 1.1 V_{NE} (power-off) if V_{NE} (power-off) is established under § 29.1505(c), and with—

* * * * *

(d) *Hovering.* For helicopters, the longitudinal cyclic control must operate with the sense, direction of motion, and position as prescribed in § 29.173 between the maximum approved rearward speed and a forward speed of 17 knots with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Power required to maintain an approximate constant height in ground effect;

(4) The landing gear extended; and

(5) The helicopter trimmed for hovering.

43. By adding a new § 29.177 to read as follows:

§ 29.177 Static directional stability.

Static directional stability must be positive with throttle and collective

controls held constant at the trim conditions specified in § 29.175 (a), (b), and (c). Sideslip angle must increase steadily with directional control deflection for sideslip angles up to ±10° from trim. Sufficient cues must accompany sideslip to alert the pilot when approaching sideslip limits.

44. By adding a new § 29.181 to read as follows:

§ 29.181 Dynamic stability: Category A rotorcraft.

Any short-period oscillation occurring at any speed from V_Y to V_{NE} must be positively damped with the primary flight controls free and in a fixed position.

45. By adding a new § 29.610 to read as follows:

§ 29.610 Lightning protection.

(a) The rotorcraft must be protected against catastrophic effects from lightning.

(b) For metallic components, compliance with paragraph (a) of this section may be shown by—

(1) Electrically bonding the components properly to the airframe; or

(2) Designing the components so that a strike will not endanger the rotorcraft.

(c) For nonmetallic components, compliance with paragraph (a) of this section may be shown by—

(1) Designing the components to minmize the effect of a strike; or

(2) Incorporating acceptable means of diverting the resulting electrical current to not endanger the rotorcraft.

46. By amending § 29.671 by adding a new paragraph (c) to read as follows:

§ 29.671 General.

* * * * *

(c) A means must be provided to allow full control movement of all primary flight controls prior to flight, or a means must be provided that will allow the pilot to determine that full control authority is available prior to flight.

47. By adding a new § 29.672 to read as follows:

§ 29.672 Stability augmentation, automatic, and power-operated systems.

If the functioning of stability augmentation or other automatic or power-operated system is necessary to show compliance with the flight characteristics requirements of this Part, the system must comply with § 29.671 of this Part and the following:

(a) A warning which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system which could result in an unsafe condition if the pilot is unaware of the failure. Warning systems must not activate the control systems.

(b) The design of the stability augmentation system or of any other automatic or power-operated system must allow initial counteraction of failures without requiring exceptional pilot skill or strength, by overriding the failure by moving the flight controls in the normal sense, and by deactivating the failed system.

(c) It must be show that after any single failure of the stability augmentation system or any other automatic or power-operated system—

(1) The rotorcraft is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations;

(2) The controllability and maneuverability requirements of this Part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and rotorcraft configurations) which is described in the Rotorcraft Flight Manual; and

(3) The trim and stability characteristics are not impaired below a level needed to allow continued safe flight and landing.

48. By adding a new § 29.673 to read as follows:

§ 29.673 Primary flight controls.

Primary flight controls are those used by the pilot for immediate control of pitch, roll, yaw, and vertical motion of the rotorcraft.

49. By amending § 29.729 by adding new introductory text; by replacing the word *"General."* with the words *"Loads."* in paragraph (a); by revising paragraph (f); and by adding a new paragraph (g) to read as follows:

§ 29.729 Retracting mechanism.

For rotorcraft with retractable landing gear, the following apply:

* * * * *

(f) *Control.* The location and operation of the retraction control must meet the requirements of §§ 29.777 and 29.779.

(g) *Landing gear warning.* An aural or equally effective landing gear warning device must be provided that functions continuously when the rotorcraft is in a normal landing mode and the landing gear is not fully extended and locked. A manual shutoff capability must be provided for the warning device and the warning system must automatically reset when the rotorcraft is no longer in the landing mode.

50. By revising the introductory paragraph to § 29.735 to read as follows:

§ 29.735 Brakes.

For rotorcraft with wheel-type landing gear, a braking device must be installed that is—

* * * * *

51. By revising § 29.771(b) to read as follows:

§ 29.771 Pilot compartment.

* * * * *

(b) If there is provision for a second pilot, the rotorcraft must be controllable with equal safety from either pilot position. Flight and powerplant controls must be designed to prevent confusion or inadvertent operation when the rotorcraft is piloted from either position;

* * * * *

52. By adding a new § 29.779 to read as follows:

§ 29.779 Motion and effect of cockpit controls.

Cockpit controls must be designed so that they operate in accordance with the following movements and actuation:

(a) Flight controls, including the collective pitch control, must operate with a sense of motion which corresponds to the effect on the rotorcraft.

(b) Twist-grip engine power controls must be designed so that, for lefthand operation, the motion of the pilot's hand is clockwise to increase power when the hand is viewed from the edge containing the index finger. Other engine power controls, excluding the collective control, must operate with a forward motion to increase power.

(c) Normal landing gear controls must operate downward to extend the landing gear.

53. By revising § 29.785(a), (b), and (c), and by adding new paragraphs (g) and (h) to read as follows:

§ 29.785 Seats, berth, safety belts, and harnesses.

(a) Each seat, berth, safety belt, harness, and adjacent part of the rotorcraft at each station designated for occupancy during takeoff and landing must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces and must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in § 29.561.

(b) Each occupant must be protected from head injury by—

(1) For each crewmember seat and each seat beside a crewmember front seat, a safety belt and harness that will

prevent the head from contacting any injurious object; and

(2) For each seat not covered under subparagraph (b)(1)—

(i) A safety belt plus the absence of injurious objects within striking radius of the head;

(ii) A safety belt, plus a shoulder harness that will prevent the head from contracting any injurious object; or

(iii) A safety belt plus an energy-absorbing rest that will support the arms, shoulders, head and spine.

(c) Each pilot's seat must have a combined safety belt and shoulder harness with a single-point release that allows the pilot, when seated with safety belt and shoulder harness fastened, to perform all of the pilot's necessary functions. There must be a means to secure belts and harnesses, when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

* * * * *

(g) When the safety belt and shoulder harness are combined, the rated strength of the safety belt and shoulder harness may not be less than that corresponding to the inertia forces specified in § 29.561, considering an occupant weight of at least 170 pounds, considering the dimensional characteristics of the restraint system installation, and using a distribution of at least 60 percent load to the safety belt and at least 60 percent load to the shoulder harness. If the safety belt is capable of being used without the shoulder harness, the inertia forces specified must be met by the safety belt alone.

(h) When a headrest is used, the headrest and its supporting structure must be designed to resist the inertia forces specified in § 29.561, with a 1.33 fitting factor and a head weight of at least 13 pounds.

§ 29.811 [Amended]

54. By amending § 29.811 by removing paragraphs (f) and (g) and redesignating paragraphs (h) and (i) as paragraphs (f) and (g), respectively.

55. By adding a new § 29.812 to read as follows:

§ 29.812 Emergency lighting.

For transport Category A rotorcraft, the following apply:

(a) A source of light with its power supply independent of the main lighting system must be installed to—

(1) Illuminate each passenger emergency exit marking and locating sign; and

(2) Provide enough general lighting in the passenger cabin so that the average illumination, when measured at 40-inch intervals at seat armrest height on the center line of the main passenger aisle, is at least 0.05 foot-candle.

(b) Exterior emergency lighting must be provided at each emergency exit. The illumination may not be less than 0.05 foot-candle (measured normal to the direction of incident light) for minimum width on the ground surface, with landing gear extended, equal to the width of the emergency exit where an evacuee is likely to make first contact with the ground outside the cabin. The exterior emergency lighting may be provided by either interior or exterior sources with light intensity measurements made with the emergency exits open.

(c) Each light required by paragraph (a) or (b) of this section must be operable manually from the cockpit station and from a point in the passenger compartment that is readily accessible. The cockpit control device must have an "on," "off," and "armed" position so that when turned on at the cockpit or passenger compartment station or when armed at the cockpit station, the emergency lights will either illuminate or remain illuminated upon interruption of the rotorcraft's normal electric power.

(d) Any means required to assist the occupants in descending to the ground must be illuminated so that the erected assist means is visible from the rotorcraft.

(1) The assist means must be provided with an illumination of not less than 0.03 foot-candle (measured normal to the direction of the incident light) at the ground end of the erected assist means where an evacuee using the established escape route would normally make first contact with the ground, with the rotorcraft in each of the attitudes corresponding to the collapse of one or more legs of the landing gear.

(2) If the emergency lighting subsystem illuminating the assist means is independent of the rotorcraft's main emergency lighting system, it—

(i) Must automatically be activated when the assist means is erected;

(ii) Must provide the illumination required by paragraph (d)(1); and

(iii) May not be adversely affected by stowage.

(e) The energy supply to each emergency lighting unit must provide the required level of illumination for at least 10 minutes at the critical ambient conditions after an emergency landing.

(f) If storage batteries are used as the energy supply for the emergency lighting system, they may be recharged from the rotorcraft's main electrical power system provided the charging circuit is designed to preclude inadvertent battery discharge into charging circuit faults.

§ 29.855 [Amended]

56. By amending § 29.855(d) by adding the words "or smoke" after the words "detection of fires".

57. By amending § 29.1303 by revising paragraph (a) and by adding a new paragraph (j) to read as follows:

§ 29.1303 Flight and navigation instruments.

* * * * *

(a) An airspeed indicator. For Category A rotorcraft with V_{NE} less than a speed at which unmistakable pilot cues provide overspeed warning, a maximum allowable airspeed indicator must be provided. If maximum allowable airspeed varies with weight, altitude, temperature, or r.p.m., the indicator must show that variation.

* * * * *

(j) For Category A rotorcraft, a speed warning device when V_{NE} is less than the speed at which unmistakable overspeed warning is provided by other pilot cues. The speed warning device must give effective aural warning (differing distinctively from aural warnings used for other purposes) to the pilots whenever the indicated speed exceeds V_{NE} plus 3 knots and must operate satisfactorily throughout the approved range of altitudes and temperatures.

58. By amending § 29.1309 by removing the phrase "*Functioning and reliability.*" from paragraph (a); by revising paragraphs (b), (c), (d), and (e); and by adding new paragraphs (f), (g), and (h) to read as follows:

§ 29.1309 Equipment, systems, and installations.

* * * * *

(b) The rotorcraft systems and associated components, considered separately and in relation to other systems, must be designed so that—

(1) For Category B rotorcraft, the equipment, systems, and installations must be designed to prevent hazards to the rotorcraft if they malfunction or fail; or

(2) For Category A rotorcraft—

(i) The occurrence of any failure condition which would prevent the continued safe flight and landing of the rotorcraft is extremely improbable; and

(ii) The occurrence of any other failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions is improbable.

(c) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and

associated monitoring and warning means must be designed to minimize crew errors which could create additional hazards.

(d) Compliance with the requirements of paragraph (b)(2) of this section must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider—

(1) Possible modes of failure, including malfunctions and damage from external sources;

(2) The probability of multiple failures and undetected failures;

(3) The resulting effects on the rotorcraft and occupants, considering the stage of flight and operating conditions; and

(4) The crew warning cues, corrective action required, and the capability of detecting faults.

(e) For Category A rotorcraft, each installation whose functioning is required by this subchapter and which requires a power supply is an "essential load" on the power supply. The power sources and the system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the system with the system functioning normally.

(2) Essential loads, after failure of any one prime mover, power converter, or energy storage device.

(3) Essential loads, after failure of—

(i) Any one engine, on rotorcraft with two engines; and

(ii) Any two engines, on rotorcraft with three or more engines.

(f) In determining compliance with paragraphs (e)(2) and (3) of this section, the power loads may be assumed to be reduced under a monitoring procedure consistent with safety in the kinds of operations authorized. Loads not required for controlled flight need not be considered for the two-engine-inoperative condition on rotorcraft with three or more engines.

(g) In showing compliance with paragraphs (a) and (b) of this section with regard to the electrical system and to equipment design and installation, critical environmental conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this subchapter, except equipment covered by Technical Standard Orders containing environmental test procedures, the ability to provide continuous, safe service under foreseeable environmental conditions may be shown by environmental tests, design analysis, or reference to previous comparable service experience on other aircraft.

(h) In showing compliance with paragraphs (a) and (b) of this section, the effects of lightning strikes on the rotorcraft must be considered in accordance with § 29.610.

59. By amending § 29.1323 by revising introductory paragraph (b), (b)(1), (c), and (d) to read as follows:

§ 29.1323 Airspeed indicating system.

* * * * *

(b) Each system must be calibrated to determine system error excluding airspeed instrument error. This calibration must be determined—

(1) In level flight at speeds of 20 knots and greater, and over an appropriate range of speeds for flight conditions of climb and autorotation; and

* * * * *

(c) For Category A rotorcraft—

(1) The indication must allow consistent definition of the critical decision point; and

(2) The system error, excluding the airspeed instrument calibration error, may not exceed—

(i) Three percent or 5 knots, whichever is greater, in level flight at speeds above 80 percent of takeoff safety speed; and

(ii) Ten knots in climb at speeds from 10 knots below takeoff safety speed to 10 knots above V_Y.

(d) For Category B rotorcraft, the system error, excluding the airspeed instrument calibration error, may not exceed 3 percent or 5 knots, whichever is greater, in level flight at speeds above 80 percent of the climbout speed attained at 50 feet when complying with § 29.63.

* * * * *

60. By revising § 29.1325(f) to read as follows:

§ 29.1325 Static pressure and pressure altimeter systems.

* * * * *

(f) Each system must be designed and installed so that an error in indicated pressure altitude, at sea level, with a standard atmosphere, excluding instrument calibration error, does not result in an error of more than ±30 feet per 100 knots speed. However, the error need not be less than ±30 feet.

* * * * *

61. By amending § 29.1329 by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 29.1329 Automatic pilot system.

(a) Each automatic pilot system must be designed so that the automatic pilot can—

(1) Be sufficiently overpowered by one pilot to allow control of the rotorcraft; and

(2) Be readily and positively disengaged by each pilot to prevent it from interfering with the control of the rotorcraft.

* * * * *

(e) If the automatic pilot integrates signals from auxiliary controls of furnishes signals for operation or other equipment, there must be positive interlocks and sequencing of engagement to prevent improper operation.

62. By revising § 29.1331(a)(3) to read as follows:

§ 29.1331 Instruments using a power supply.

* * * * *

(a) * * *

(3) A visual means integral with each instrument to indicate when the power adequate to sustain proper instrument performance is not being supplied. The power must be measured at or near the point where it enters the instrument. For electrical instruments, the power is considered to be adequate when the voltage is within the approved limits; and

* * * * *

63. By revising § 29.1333 to read as follows:

§ 29.1333 Instrument systems.

For systems that operate the required flight instruments which are located at each pilot's station, the following apply:

(a) Only the required flight instruments for the first pilot may be connected to that operating system.

(b) The equipment, systems, and installations must be designed so that one display of the information essential to the safety of flight which is provided by the flight instruments remains available to a pilot, without additional crewmember action, after any single failure or combination of failures that are not shown to be extremely improbable.

(c) Additional instruments, systems, or equipment may not be connected to the operating system for a second pilot unless provisions are made to ensure the continued normal functioning of the required flight instruments in the event of any malfunction of the additional instruments, systems, or equipment which is not shown to be extremely improbable.

64. By revising § 29.1355(b) to read as follows:

§ 29.1355 Distribution system.

* * * * *

(b) If two independent sources of electrical power for particular equipment or systems are required by

this chapter, in the event of the failure of one power source for such equipment or system, another power source (including its separate feeder) must be provided automatically or be manually selectable to maintain equipment or system operation.

65. By revising § 29.1357 (b), (d), and (e) and by adding a new paragraph (g) to read as follows:

§ 29.1357 Circuit protective devices.

* * * * *

(b) The protective and control devices in the generating system must be designed to de-energize and disconnect faulty power sources and power transmission equipment from their associated buses with sufficient rapidity to provide protection from hazardous overvoltage and other malfunctioning.

* * * * *

(d) If the ability to reset a circuit breaker or replace a fuse is essential to safety in flight, that circuit breaker or fuse must be located and identified so that it can be readily reset or replaced in flight.

(e) Each essential load must have individual circuit protection. However, individual protection for each circuit in an essential load system (such as each position light circuit in a system) is not required.

* * * * *

(g) Automatic reset circuit breakers may be used as integral protectors for electrical equipment provided there is circuit protection for the cable supplying power to the equipment.

66. By amending § 29.1505 by removing the word "or" at the end of paragraph (a)(2)(i); by removing the period from the end of paragraph (a)(2)(ii) and adding "; or" in its place; and by adding a new paragraph (a)(2)(iii) to read as follows:

§ 29.1505 Never-exceed speed.

(a) * * *

(2) * * *

(iii) 0.9 times the maximum speed substantiated for advancing blade tip mach number effects under critical altitude conditions.

* * * * *

67. By revising § 29.1525 to read as follows:

§ 29.1525 Kinds of operations.

The kinds of operations (such as VFR, IFR, day, night, or icing) for which the rotorcraft is approved are established by demonstrated compliance with the applicable certification requirements and by the installed equipment.

68. By revising § 29.1555(a) and adding a new paragraph (e) to read as follows:

§ 29.1555 Control markings.

(a) Each cockpit control, other than primary flight controls or control whose function is obvious, must be plainly marked as to its function and method of operation.

* * * * *

(e) For rotorcraft incorporating retractable landing gear, the maximum landing gear operating speed must be displayed in clear view of the pilot.

69. By revising § 29.1559 to read as follows:

§ 29.1559 Limitations placard.

There must be a placard in clear view of the pilot that specifies the kinds of operations (VFR, IFR, day, night, or icing) for which the rotorcraft is approved.

70. By amending § 29.1583 by revising paragraph (g) and by adding a new paragraph (i) to read as follows:

§ 29.1583 Operating limitations.

* * * * *

(g) *Maximum allowable wind.* For Category A rotorcraft, the maximum allowable wind for safe operation near the ground must be furnished.

* * * * *

(i) *Ambient temperature.* Maximum and minimum ambient temperature limitations must be furnished.

71. By adding a new § 29.1585(g) to read as follows:

§ 29.1585 Operating procedures.

* * * * *

(g) For Category B rotorcraft, the airspeeds and corresponding rotor speeds for minimum rate of descent and best glide angle as prescribed in § 29.71 must be provided.

* * * * *

72. By amending § 29.1587 by adding an introductory paragraph; by removing the word "and" from the end of paragraphs (a)(3) and (b)(6); by revising paragraph (a)(4); by adding new paragraphs (a)(5), (b)(7), (b)(8), by redesignating paragraphs (b)(7) to (b)(9), and by amending paragraph (b)(1) to read as follows:

§ 29.1587 Performance information.

Flight manual performance information which exceeds any operating limitation may be shown only to the extent necessary for presentation clarity or to determine the effects of approved optional equipment or procedures. When data beyond operating limits are shown, the limits must be clearly indicated. The following must be provided:

(a) * * *

(4) The rejected takeoff distance determined under § 29.59(b) and the takeoff distance determined under § 29.59(c); and

(5) The landing data determined under §§ 29.75 and 29.77.

(b) * * *

(1) The takeoff distance and the climbout speed together with the pertinent information defining the flight path with respect to autorotative landing if an engine fails, including the calculated effects of altitude and temperature;

* * * * *

(7) Glide distance as a function of altitude when autorotating at the speeds and conditions for minimum rate of descent and best glide angle, as determined in § 29.71;

(8) Maximum safe wind for hover operations out-of-ground effect if hover performance for that condition is provided; and

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

73. By amending § 91.31 by revising the title and paragraph (a) and by removing paragraph (e) as follows:

§ 91.31 Civil aircraft flight manual, marking, and placard requirements.

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

* * * * *

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (40 U.S.C. 1354(a), 1421, 1423 and 1424); 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983))

Note.—As summarized in the Supplementary Information, Discussion of Comments, Economic Summary, and Regulatory Flexibility Determination sections of this rulemaking action, the FAA has determined that the benefits of this amendment, in providing an increased level of safety to passengers traveling in rotorcraft

while at the same time recognizing and providing for the unique qualities and capabilities of rotorcraft, far outweigh the burdens and that this action: (1) Involves a regulation that is not a major rule under Executive Order 12291; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, for reasons discussed above, I certify that under the criteria of the Regulatory Flexibility Act these amendments will not have a significant economic impact on a substantial number of small entities. Also, these amendments would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. A final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

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

Donald D. Engen,

Administrator.

[FR Doc. 84-29088 Filed 11-5-84; 8:45 am]

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S. 66/Pub. L. 98-549

Cable Communications Policy Act of 1984. (Oct. 30, 1984; 98 Stat. 2779) Price: $1.50

S. 543/Pub. L. 98-550

The Wyoming Wilderness Act of 1984. (Oct. 30, 1984; 98 Stat. 2807) Price: $1.00

S. 771/Pub. L. 98-551

Health Promotion and Disease Prevention Amendments of 1984. (Oct. 30, 1984; 98 Stat. 2815) Price: $1.00

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To authorize Douglas County of the State of Nevada to transfer certain land to a private owner. (Oct. 30, 1984; 98 Stat. 2823) Price: $1.00

S. 1291/Pub. L. 98-553

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, and section 305 of the Energy Reorganization Act of 1974. (Oct. 30, 1984; 98 Stat. 2825) Price: $1.00

S. 2217/Pub. L. 98-554

To provide for exemptions, based on safety concerns, from certain length and width limitations for commercial motor vehicles, and for other purposes. (Oct. 30, 1984; 98 Stat. 2829) Price: $1.50

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S. 2565/Pub. L. 98-558

Human Services Reauthorization Act. (Oct. 30, 1984; 98 Stat. 2878) Price: $1.50

S. 2706/Pub. L. 98-559

To amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1985 and 1986, and for other purposes. (Oct. 30, 1984; 98 Stat. 2907) Price: $1.00

S. 3021/Pub. L. 98-560

To name the Federal Building in Elkins, West Virginia, the "Jennings Randolph Federal Center". (Oct. 30, 1984; 98 Stat. 2909) Price: $1.00

S. 3034/Pub. L. 98-561

To grant a Federal charter to the National Society, Daughters of the American Colonists. (Oct. 30, 1984; 98 Stat. 2910) Price: $1.00

S.J. Res. 236/Pub. L. 98-562

Relating to cooperative East-West ventures in space. (Oct. 30, 1984; 98 Stat. 2914) Price: $1.00

H.R. 89/Pub. L. 98-563

To permit the transportation of passengers between Puerto Rico and other United States ports on foreign-flag vessels when United States flag service for such transportation is not available. (Oct. 30, 1984; 98 Stat. 2916) Price: $1.00

H.R. 597/Pub. L. 98-564

To amend section 2733, 2734, and 2736 of title 10, United States Code, and section 715 of title 32, United States Code, to increase the maximum amount of a claim against the United States that may be paid administratively under those sections and to allow increased delegation of authority to settle and pay certain of those claims, and for other purposes. (Oct. 30, 1984; 98 Stat. 2918) Price: $1.00

H.R. 1095/Pub. L. 98-565

To grant a Federal charter to the 369th Veterans' Association. (Oct. 30, 1984; 98 Stat. 2920) Price: $1.00

H.R. 1870/Pub. L. 98-566

Vietnam Veterans National Medal Act. (Oct. 30, 1984; 98 Stat. 2923) Price: $1.00

H.R. 1880/Pub. L. 98-567

Cigarette Safety Act of 1984. (Oct. 30, 1984; 98 Stat. 2925) Price: $1.00

H.R. 2645/Pub. L. 98-568

To amend the Act of August 15, 1978, regarding the Chattahoochee River National Recreation Area in the State of Georgia. (Oct. 30, 1984; 98 Stat. 2928) Price: $1.00

H.R. 2790/Pub. L. 98-569

To amend the Colorado River Basin Salinity Control Act to authorize certain additional measures to assure accomplishment of the objectives of title II of such Act, and for other purposes. (Oct. 30, 1984; 98 Stat. 2933) Price: $1.00

H.R. 2823/Pub. L. 98-570

To amend title I of the Reclamation Project Authorization Act of 1972 in order to provide for the establishment of the Russell Lakes Waterfowl Management Area as a replacement for the authorized Mishak National Wildlife Refuge, and for other purposes. (Oct. 30, 1984; 98 Stat. 2941) Price: $1.00

H.R. 3150/Pub. L. 98-571

To direct the Secretary of Agriculture to convey, for certain specified consideration, to the Sabine River Authority approximately thirty-one thousand acres of land within the Sabine National Forest to be used for the purposes of the Toledo Bend project, Louisiana and Texas, and for other purposes. (Oct. 30, 1984; 98 Stat. 2943) Price: $1.00

H.R. 3331/Pub. L. 98-572

To authorize the exchange of certain lands between the Bureau of Land Management and the city of Los Angeles for purposes of the Santa Monica Mountains National Recreation Area. (Oct. 30, 1984; 98 Stat. 2946) Price: $1.00

H.R. 3398/Pub. L. 98-573

Trade and Tariff Act of 1984. (Oct. 30, 1984; 98 Stat. 2948) Price: $3.75

H.R. 3788/Pub. L. 98-574

Texas Wilderness Act of 1984. (Oct. 30, 1984; 98 Stat. 3051) Price: $1.00

H.R. 3942/Pub. L. 98-575

Commercial Space Launch Act. (Oct. 30, 1984; 98 Stat. 3055) Price: $1.00

H.R. 3971/Pub. L. 98-576

To provide that any Osage headright or restricted real estate or funds which is part of the estate of a deceased Osage Indian who did not possess a certificate of competency at the time of death shall be exempt from any estate or inheritance tax imposed by the State of Oklahoma. (Oct. 30, 1984; 98 Stat. 3065) Price: $1.00

H.R. 4209/Pub. L. 98-577

Small Business and Federal Procurement Competition

Enhancement Act of 1984. (Oct. 30, 1984; 98 Stat. 3066) Price: $1.25

H.R. 4263/Pub. L. 98-578
Tennessee Wilderness Act of 1984. (Oct. 30, 1984; 98 Stat. 3088) Price: $1.00

H.R. 4354/Pub. L. 98-579
To designate the Federal Building and United States Courthouse in Ocala, Florida, as the "Golden-Collum Memorial Federal Building and United States Courthouse". (Oct. 30, 1984; 98 Stat. 3091) Price: $1.00

H.R. 4473/Pub. L. 98-580
To designate the Federal Archives and Records Center in San Bruno, California, as the "Leo J. Ryan Memorial Federal Archives and Records Center". (Oct. 30, 1984; 98 Stat. 3092) Price: $1.00

H.R. 4585/Pub. L. 98-581
To authorize appropriations for the Office of Environmental Quality and the Council on Environmental Quality for fiscal years 1985 and 1986, and for other purposes. (Oct. 30, 1984; 98 Stat. 3093) Price: $1.00

H.R. 4700/Pub. L. 98-582
To designate the Federal Building and United States Courthouse at 1961 Stout Street, Denver, Colorado, as the "Byron G. Rogers Federal Building and United States Courthouse". (Oct. 30, 1984; 98 Stat. 3095) Price: $1.00

H.R. 4717/Pub. L. 98-583
To designate the Federal Building and United States Courthouse in Las Vegas, Nevada, as the "Foley Federal Building and United States Courthouse". (Oct. 30, 1984; 98 Stat. 3096) Price: $1.00

H.R. 4966/Pub. L. 98-584
To recognize the organization known as the Women's Army Corps Veterans' Association. (Oct. 30, 1984; 98 Stat. 3097) Price: $1.00

H.R. 5076/Pub. L. 98-585
Pennsylvania Wilderness Act of 1984. (Oct. 30, 1984; 98 Stat. 3100) Price: $1.00

H.R. 5121/Pub. L. 98-586
Virginia Wilderness Act of 1984. (Oct. 30, 1984; 98 Stat. 3105) Price: $1.00

H.R. 5189/Pub. L. 98-587
To amend section 3056 of title 18, United States Code, to update the authorities of the United States Secret Service, and for other purposes. (Oct. 30, 1984; 98 Stat. 3110) Price: $1.00

H.R. 5252/Pub. L. 98-588
To redesignate the Veterans' Administration Medical Center located in Poplar Bluff, Missouri, as the "John J. Pershing Veterans' Administration Medical Center". of 1984. (Oct. 30, 1984; 98 Stat. 3113) Price: $1.00

H.R. 5323/Pub. L. 98-589
To designate the United States Courthouse Building in Hato Rey, Puerto Rico, as the "Clemente Ruiz Nazario United States Courthouse". (Oct. 30, 1984; 98 Stat. 3114) Price: $1.00

H.R. 5358/Pub. L. 98-590
Honey Research, Promotion, and Consumer Information Act. (Oct. 30, 1984; 98 Stat. 3115) Price: $1.00

H.R. 5402/Pub. L. 98-591
To designate the United States Post Office and Courthouse in Utica, New York, as the "Alexander Pirnie Federal Building". (Oct. 30, 1984; 98 Stat. 3125) Price: $1.00

H.R. 5716/Pub. L. 98-592
Providing for the conveyance of public lands, Seneca County, Ohio. (Oct. 30, 1984; 98 Stat. 3126) Price: $1.00

H.R. 5747/Pub. L. 98-593
To designate the Federal building in Oak Ridge, Tennessee, as the "Joe L. Evins Federal Building." (Oct. 30, 1984; 98 Stat. 3128) Price: $1.00

H.R. 5832/Pub. L. 98-594
To authorize two additional Assistant Secretaries for the Department of the Treasury. (Oct. 30, 1984; 98 Stat. 3129) Price: $1.00

H.R. 5833/Pub. L. 98-595
To improve certain maritime programs of the Department of Transportation and the Department of Commerce. (Oct. 30, 1984; 98 Stat. 3130) Price: $1.00

H.R. 5846/Pub. L. 98-596
Criminal Fine Enforcement Act of 1984. (Oct. 30, 1984; 98 Stat. 3134) Price: $1.00

H.R. 6000/Pub. L. 98-597
To designate the Table Rock Lake Visitors Center building in the vicinity of Branson, Missouri, as the "Dewey J. Short Table Rock Lake Visitors Center". (Oct. 30, 1984; 98 Stat. 3141) Price: $1.00

H.R. 6007/Pub. L. 98-598
District of Columbia Retired Judge Service Act. (Oct. 30, 1984; 98 Stat. 3142) Price: $1.00

H.R. 6100/Pub. L. 98-599
To clarify the intent of Congress with respect to the families eligible for a commemorative medal authorized for the families of Americans missing or otherwise unaccounted for in Southeast Asia. (Oct. 30, 1984; 98 Stat. 3144) Price: $1.00

H.R. 6101/Pub. L. 98-600
To amend the Panama Canal Act of 1979 to authorize quarters allowances for certain employees of the Department of Defense serving in the area formerly known as the Canal Zone. of 1984. (Oct. 30, 1984; 98 Stat. 3145) Price: $1.00

H.R. 6112/Pub. L. 98-601
To amend the Tax Equity and Fiscal Responsibility Act of 1982 with respect to the effect of the 1985 increase in the Federal unemployment tax rate on certain small business provisions contained in State unemployment compensation laws. (Oct. 30, 1984; 98 Stat. 3147) Price: $1.00

H.R. 6221/Pub. L. 98-602
To provide for the use and distribution of certain funds awarded the Wyandotte Tribe of Oklahoma and to restore certain mineral rights to the Three Affiliated Tribes of the Fort Berthold Reservation. (Oct. 30, 1984; 98 Stat. 3149) Price: $1.00

H.R. 6296/Pub. L. 98-603
The San Juan Basin Wilderness Protection Act of 1984. (Oct. 30, 1984; 98 Stat. 3155) Price: $1.00

H.R. 6299/Pub. L. 98-604
To ensure the payment in 1985 of cost-of-living increases under the OASDI program in title II of the Social Security Act, and to provide for a study of certain changes which might be made in the provisions authorizing cost-of-living adjustments under that program. (Oct. 30, 1984; 98 Stat. 3161) Price: $1.00

H.R. 6303/Pub. L. 98-605
Osage Tribe of Indians Technical Corrections Act of 1984. (Oct. 30, 1984; 98 Stat. 3163) Price: $1.00

H.R. 6430/Pub. L. 98-606
To amend the River and Harbor Act of 1946. (Oct. 30, 1984; 98 Stat. 3169) Price: $1.00

H.R. 6441/Pub. L. 98-607
To eliminate restrictions with respect to the imposition and collection of tolls on the Richmond-Petersburg Turnpike upon repayment by the Commonwealth of Virginia of certain Federal-aid highway funds used on such turnpike. (Oct. 30, 1984; 98 Stat. 3170) Price: $1.00

H.J. Res. 158/Pub. L. 98-608
To make technical corrections in the Act of January 12, 1983 (Public Law 97-459). (Oct. 30, 1984; 98 Stat. 3171) Price: $1.00

H.J. Res. 332/Pub. L. 98-609
To designate the week beginning May 20, 1985, as "National Medical Transcriptionist Week". (Oct. 30, 1984; 98 Stat. 3174) Price: $1.00

H.J. Res. 594/Pub. L. 98-610
Designating the week beginning February 17, 1985, as a time to recognize volunteers who give their time to become Big Brothers and Big Sisters to youths in need of adult companionship. (Oct. 30, 1984; 98 Stat. 3175) Price: $1.00

H.R. 2568/Pub. L. 98-611
To amend the Internal Revenue Code of 1954 to extend for 2 years the exclusion from gross income with respect to educational assistance programs, and for other purposes. (Oct. 31, 1984; 98 Stat. 3176) Price: $1.00

H.R. 5361/Pub. L. 98-612
To amend the Internal Revenue Code of 1954 to extend for one year the exclusion from gross income with respect to group legal services plans, and for other purposes. (Oct. 31, 1984; 98 Stat. 3180) Price: $1.00

H.R. 5492 /Pub. L. 98-613
Atlantic Striped Bass Conservation Act. (Oct. 31, 1984; 98 Stat. 3187) Price: $1.00



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