Vol.41—No.18
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PAGES
3847-4010

federal register

TUESDAY, JANUARY 27, 1976

highlights

TEACHER CORPS PROJECTS
HEW/OE accepts applications for non-competing continuation grants 3889

PRIVACY ACT OF 1974
VA issues rules on implementation; effective 9-27-75 3857

SCHOOL BUS SAFETY STANDARDS
DOT/NHTSA issues emergency exit requirements, roll-over protection, and minimum performance level for body panel joints (4 documents); effective 10-26-76 ..... 3871, 3872, 3874, 3878

FEDERAL ELECTION COMMISSION
FEC publishes advisory opinions 3989

NEW PNEUMATIC TIRES FOR PASSENGER CARS
DOT/NHTSA adopts certain tire size designations 3870

FOOD ADDITIVES
HEW/FDA provides for safe use of ethylene copolymer, chlorosulfonated; effective 1-27-76, objections 2-26-76 3852

NEW ANIMAL DRUGS
HEW/FDA approves trimethoprim and sulfadiazine tablets for treating bacterial infections in dogs; effective 1-27-76 3853

DRUG QUALITY ASSURANCE
HEW/FDA interagency agreement with Defense Department 3887

MEETINGS—
DOD/Army: Ballistic Missile Defense Technology Advisory Panel, 2-4 thru 2-26-76 3884
Navy: Chief of Naval Operations Industry Advisory Committee for Telecommunications, 2-11 and 2-12-76 3884
Interior/BLM: Utah State Multiple Use Advisory Board, 3-4-76 3884
NSF: Advisory Committee on Energy Facility Siting, 2-12 and 2-13-76 3918
Advisory Panel for Science Education Projects, 2-12 thru 2-14-76 3919
Advisory Panel for Environmental Biology, 2-12 and 2-13-76 3918
SBA: National Advisory Council, 2-20-76 3924
USDA/FS: Manti Division Grazing Advisory Board, 2-19-76 3886
EPA: National Drinking Water Advisory Council, 2-12-76 3894

CANCELLED MEETINGS—
HEW/NIH: National Cancer Advisory Board, 2-2-76 3889

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items published after October 1, 1972, that are eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

NOTE: No acts approved by the President were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

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contents

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
Rules
Internal Revenue Service procedures; recommendations; correction ---- 3981

AGRICULTURE DEPARTMENT
See also Farmers Home Administration; Federal Crop Insurance Corporation; Forest Service.

ALCOHOL, TOBACCO AND FIREARMS BUREAU
Proposed Rules
Commerce in firearms and ammunition, and in explosives:
Black powder; extension of comment period ---- 3877

ARMY DEPARTMENT
Notices
Meeting:
Ballistic Missile Defense Technology Advisory Panel ---- 3884

CIVIL AERONAUTICS BOARD
Notices
Hearings, etc.:
Flying Tiger Line Inc ---- 3890
Kingston Air Services, Ltd ---- 3891
Taca International Airlines, S.A ---- 3891
Texas International Airlines, Inc., and Trans World Airlines, Inc ---- 3892

COAST GUARD
Rules
Drawbridge operation:
Harlem River, East River, and Gowanus Canal, N.Y.; correction ---- 3857

COMMERCE DEPARTMENT
See Economic Development Administration; National Oceanic and Atmospheric Administration.

COMMODITY FUTURES TRADING COMMISSION
Rules
Reparation proceedings ---- 3993

DEFENSE DEPARTMENT
See also Army Department; Navy Department.
Notices
Drug quality assurance; interagency with the Food and Drug Administration ---- 3884

ECONOMIC DEVELOPMENT ADMINISTRATION
Notices
Petition for determination:
Cobblers, Inc ---- 3886

EDUCATION OFFICE
Notices
Applications and proposals, closing dates:
Teacher Corps ---- 3889

ENVIRONMENTAL PROTECTION AGENCY
Notices
Ambient air monitoring reference and equivalent methods; designations ---- 3893
Meetings:
National Drinking Water Advisory Council ---- 3894
Pesticide registration applications:
Nebraska and New York ---- 3894
Pesticides, specific exemptions and experimental use permits:
Hoffmann-La Roche, Inc ---- 3894

FARMERS HOME ADMINISTRATION
Notices
Disaster areas:
Texas ---- 3886

FEDERAL AVIATION ADMINISTRATION
Rules
Airworthiness directives:
Boeing ---- 3847
Prestolite ---- 3847
Transition area ---- 3848
Proposed Rules
Airworthiness directive:
Beech ---- 3878

FEDERAL COMMUNICATIONS COMMISSION
Rules
Cable television services:
Selection of television signals ---- 3860
Public safety radio services:
Nationwide police emergency communications channel ---- 3863
Radio treaty matters; operation of airborne surface detection equipment radar ---- 3859
Proposed Rules
FM broadcast stations; table of assignments:
Florida ---- 3880
Taxicab radio service; new stations in New York City area ---- 3879
Notices
Common carrier services information; applications accepted for filing ---- 3901
Hearings, etc.:
American Telephone and Telegraph Co ---- 3897
Klein, Alexander S., Jr., et al ---- 3895
Overseas Dataphone Service ---- 3903

FEDERAL CROP INSURANCE CORPORATION
Notices
Authority delegations:
Deputy Manager, et al ---- 3886

FEDERAL ELECTION COMMISSION
Notices
Federal election campaign:
Counsel opinion ---- 3989

FEDERAL POWER COMMISSION
Rules
Public utilities, Classes A, B, and C, licensees and natural gas companies; deferred income taxes ---- 3849
Rate schedules; filing (2 documents) ---- 3848
Notices
Hearings, etc.:
Appalachian Power Co. (2 documents) ---- 3906
Arkansas Louisiana Gas Co ---- 3906
Atlantic City Electric Co ---- 3907
Boston Edison Co ---- 3907
Brockton Edison Co ---- 3907
Carolina Power & Light Co ---- 3908
Cities Service Gas Co ---- 3908
Colorado Interstate Gas Co ---- 3908
Columbia Gas Transmission Corp ---- 3908
Commercial Pipeline Co., Inc ---- 3909
Connecticut Light and Power Co ---- 3909
Dayton Power and Light Co ---- 3910
Eastern Shore Natural Gas Co. (2 documents) ---- 3911
Georgia Power Co ---- 3911
Gowdy, George H ---- 3911
Illinois Power Co ---- 3911
Independent Oil & Gas Association of West Virginia ---- 3912
Indiana & Michigan Electric Co. (8 documents) ---- 3912-3914
Iowa Power and Light Co ---- 3914
Kansas Gas and Electric Co ---- 3914
Michigan Power Co ---- 3914
Nautral Gas Pipeline Company of America et al ---- 3915
Northern Natural Gas Co ---- 3915
Northern States Power Co ---- 3915
Northern States Power Company of Minnesota ---- 3915
Ohio Power Co ---- 3915
Pacific Power & Light Co ---- 3916
Panhandle Eastern Pipe Line Co ---- 3916
South Texas Natural Gas Gathering Co ---- 3916
Southern Natural Gas Co ---- 3917
Texas Eastern Transmission Corp ---- 3917
Transcontinental Gas Pipe Line Corp ---- 3917
Transcontinental Gas Pipe Line Corp. et al ---- 3918
United Gas Pipeline Co ---- 3918

FEDERAL RAILROAD ADMINISTRATION
Notices
Petitions for exemptions, etc:
Maryland & Pennsylvania Railroad Co ---- 3889

FISH AND WILDLIFE SERVICE
Proposed Rules
Endangered and threatened wildlife and plants; public hearing; denial of request ---- 3877
Notices
Endangered species permits:
Official action ---- 3885

FOOD AND DRUG ADMINISTRATION
Rules
Animal drugs, feeds, and related products:
Trimethoprim and sulfadiazine tablets ---- 3853
Food additives:
Ethylene polymer, chlorosulfonated ---- 3852

Notices
Drug quality assurance; interagency agreement with Defense Department ---- 3887

FOREST SERVICE
Notices
Meeting:
Manti Division Grazing Advisory Board ---- 3886

GENERAL SERVICES ADMINISTRATION
Rules
Supply and procurement:
Management of Government-owned inventories of personal property ---- 3858
Notices
Radiological incident emergency response planning; interagency responsibilities; correction ---- 3918

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
See Education Office; Food and Drug Administration; National Institutes of Health.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Notices
Authority delegations:
Secretary of Agriculture ---- 3889

INTERIOR DEPARTMENT
See also Fish and Wildlife Service; Land Management Bureau; National Park Service.

INTERSTATE COMMERCE COMMISSION
Notices
Fourth section applications for relief ---- 3933
Hearing assignments ---- 3933
Increased freight rates and charges; 1976 ---- 3933
Motor carriers:
Temporary authority applications ---- 3935

JUSTICE DEPARTMENT
Rules
Employee Retirement Income Security Act:
Certificates of exemption application procedures ---- 3855
Labor-Management Reporting and Disclosure Act:
Certificates of exemption application procedures ---- 3853

LABOR DEPARTMENT
See Wage and Hour Division.
Notices
Adjustment assistance:
Andrew Pallack & Co., Inc ---- 3925
Arrow Clothes, Inc ---- 3925
Baxter Stores, Inc ---- 3926
Chrysler Corp ---- 3926
Delton, Ltd. et al ---- 3927
Florsheim Shoe Co ---- 3928
Fulton Clothes Co., Inc ---- 3928
Hudson Pants Co ---- 3929
M. Kopp, Inc ---- 3929
Lefeton Custom Tailors ---- 3930
Malcom Kenneth Co ---- 3931
Robert Hall Manufacturing Co ---- 3931
Saint Laurie, Ltd ---- 3932
William P. Goldman & Bros., Inc ---- 3932

LAND MANAGEMENT BUREAU
Rules
Public land orders:
Idaho; correction ---- 3859
Outer Continental Shelf; joint bidding ---- 3859
Proposed Rules
Sales of forest product; policy ---- 3877
Notices
Meeting:
Utah State Multiple Use Advisory Board ---- 3884
Oil and gas leasing; Outer Continental Shelf; correction ---- 3884

MATERIALS TRANSPORTATION BUREAU
Rules
Shipping container specifications:
Bottom outlet valves on MC 312 cargo tanks ---- 3869
Tank cars specifications:
Ethylene oxide; opening in tank car heads ---- 3869

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Rules
Motor vehicle safety standards:
New pneumatic tires for passenger cars ---- 3870
School bus emergency exit requirements ---- 3871
School bus body joint strength ---- 3872
School bus rollover protection ---- 3874
Proposed Rules
Motor vehicle safety standards:
School bus emergency exit requirements ---- 3878

NATIONAL INSTITUTES OF HEALTH
Notices
Meetings:
Cancer Advisory Board, National ---- 3889

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
Notices
Marine mammal permit applications:
Fisherman's Marketing Association of Washington ---- 3887

NATIONAL PARK SERVICE
Notices
Visitor interpretive transportation services; suspension ---- 3885

NATIONAL SCIENCE FOUNDATION
Notices
Meetings:
Energy Facility Siting Advisory Committee ---- 3918
Environmental Biology Advisory Panel ---- 3918
Science Education Projects Advisory Panel ---- 3919

NAVY DEPARTMENT
Notices
Meeting:
Chief of Naval Operations Industry Advisory Committee for Telecommunications ---- 3884

NUCLEAR REGULATORY COMMISSION
Notices
Applications, etc.:
Babcock & Wilcox ---- 3919
Carolina Power and Light Co ---- 3919
Chem-Nuclear Systems, Inc ---- 3919
Commonwealth Edison Co. (2 documents) ---- 3919, 3920
Dairyland Power Cooperative ---- 3920
General Atomic Co ---- 3920
Georgia Power Co ---- 3921
Indiana and Michigan Power Co., et al ---- 3921
Kansas Gas and Electric Co., et al ---- 3921
Power Authority of the State of New York, et al ---- 3921
Wisconsin Electric Power Co., et al ---- 3922
Yankee Atomic Electric Co ---- 3922
Regulatory guides; issuance and availability ---- 3922

RENEGOTIATION BOARD
Proposed Rules
Subcontracts to perform work or furnish materials; definition ---- 3882

SECURITIES AND EXCHANGE COMMISSION
Notices
Hearings, etc.:
Equity Funding Corp. of America ---- 3923
Georgia Power Co ---- 3923
Investors Syndicate of America ---- 3923
TI Corp. of California ---- 3924
Western Orbis Co ---- 3924

SMALL BUSINESS ADMINISTRATION
Notices
Meetings:
National Advisory Council ---- 3924

TRANSPORTATION DEPARTMENT
See also Coast Guard; Federal Aviation Administration; Federal Railroad Administration; Materials Transportation Bureau; National Highway Traffic Safety Administration.

TREASURY DEPARTMENT
See Alcohol, Tobacco, and Firearms Bureau.

VETERANS ADMINISTRATION
Rules
Privacy Act of 1974:
Safeguarding personal information in records ---- 3857

WAGE AND HOUR DIVISION
Proposed Rules
Industry committee for industries in American Samoa; change in hearing date ---- 3878

list of cfr parts affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

1 CFR
305 ---- 3982

14 CFR
39 (2 documents) ---- 3847
71 ---- 3848
PROPOSED RULES:
39 ---- 3878

17 CFR
12 ---- 3994

18 CFR
35 (2 documents) ---- 3848
101 ---- 3849
104 ---- 3849
141 ---- 3849
201 ---- 3849
204 ---- 3849
260 ---- 3849

21 CFR
121 ---- 3852
520 ---- 3853

27 CFR
PROPOSED RULES:
178 ---- 3877
181 ---- 3877

28 CFR
4 ---- 3853
4a ---- 3855

29 CFR
PROPOSED RULES:
697 ---- 3878

32 CFR
PROPOSED RULES:
1452 ---- 3882

33 CFR
117 ---- 3857

38 CFR
1 ---- 3857

41 CFR
101-27 ---- 3858

43 CFR
3300 ---- 3859

PUBLIC LAND ORDERS:
5568 ---- 3859
PROPOSED RULES:
5400 ---- 3877

47 CFR
2 ---- 3859
76 ---- 3860
89 ---- 3863
PROPOSED RULES:
2 ---- 3879
73 ---- 3880
93 ---- 3879

49 CFR
178 ---- 3869
179 ---- 3869
571 (4 documents) ---- 3870–3872, 3874
PROPOSED RULES:
571 ---- 3878

50 CFR
PROPOSED RULES:
17 ---- 3877

CUMULATIVE LIST OF PARTS AFFECTED—JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

Ch. 1 — 1
305 — 1868, 3982

3 CFR

PROCLAMATIONS:

3279 (Amended by Proc. 4412) — 1047
4210 (See Proc. 4412) — 1037
4335 (Revoked by Proc. 4410) — 749
4341 (See Proc. 4412) — 1037
4382 (See Proc. 4410) — 749
4410 — 749
4411 — 1037
4412 — 1037
4413 — 3455
4414 — 3457

EXECUTIVE ORDERS:

11157 (Amended by EO 11897) — 2071
11531 (Superseded by EO 11895) — 1465
11647 (Amended by EO 11892) — 751
11717 (Superseded in part by EO 11893)
11731 (Amended by EO 11892) — 751
11846 (Amended by EO 11894) — 1041
11861 (Amended by EO 11898) — 1040
11867 (Superseded in part by EO 11893) — 1040
11892 — 751
11893 — 1040
11894 — 1041
11895 — 1465
11896 — 2067
11897 — 2071
11898 — 2365
11899 — 3459
11900 — 3461

MEMORANDUMS:

Memorandum of Nov. 10, 1975 — 2627

4 CFR

20 — 2073, 2367

5 CFR

213 — 1467, 1577, 1737, 2073, 3073
930 — 2074

PROPOSED RULES:

2402 — 1400

7 CFR

2 — 3463
16 — 2805
52 — 2367
53 — 2371
210 — 3073
226 — 2074
246 — 1743, 3733
250 — 1487
271 — 1268, 1269, 3073
401 — 1577, 1578
722 — 1580, 3270
729 — 1885
730 — 1043
793 — 2805
905 — 3282
907 — 1489, 2225, 3282
910 — 1, 1580, 1885, 2371, 3463

7 CFR—Continued

915 — 3283
916 — 1043
993 — 2372
999 — 2074
1823 — 1490
1822 — 2372
1832 — 3464
1872 — 1490
2610 — 1886

PROPOSED RULES:

20 — 3744
51 — 2074
52 — 3309, 3741
210 — 2249
225 — 1078, 2650
663 — 6
662 — 1774
722 — 2097
730 — 1078
905 — 2091
907 — 1600
928 — 1077
959 — 2091
984 — 1916
991 — 3093
1002 — 2092
1131 — 2093
1430 — 775
1701 — 775
1813 — 3094

8 CFR

103 — 1887, 2629

PROPOSED RULES:

243 — 2647

9 CFR

78 — 753, 766, 2075
92 — 3073
97 — 3074
317 — 2225, 2630
318 — 2630
319 — 2630
350 — 753
351 — 753
355 — 753
381 — 2225

PROPOSED RULES:

92 — 2249
303 — 1289
318 — 1773
331 — 2827
381 — 1289, 1773, 2827

10 CFR

205 — 2226
210 — 1486
211 — 1044, 1487
212 — 1267
213 — 2226

PROPOSED RULES:

205 — 2249
209 — 1291, 2833
210 — 1564
211 — 2830
212 — 1295, 1564, 1580

11 CFR

PROPOSED RULES:

115 — 2251

12 CFR

8 — 3284
208 — 1269
210 — 3074
265 — 1737
304 — 2630
333 — 2374
561 — 1888
571 — 2805
613 — 1269

PROPOSED RULES:

202 — 1769
210 — 3097
406 — 1086

13 CFR

309 — 1738, 3286

PROPOSED RULES:

115 — 1608

14 CFR

Ch. I — 2248
21 — 1060
29 — 1060
39 — 1046–1055, 1270, 1581, 1738, 1888, 1889, 2375–2377, 2631, 3847
71 — 2, 300, 753, 1055, 1467, 1582, 1583, 1739, 1889, 1890, 2075, 2377, 2378, 3074, 3075, 3464, 3465, 3733, 3848
73 — 300, 1055, 1583
75 — 300, 1890, 3465
91 — 1060, 1890
95 — 1055
97 — 1270, 3347, 3075
288 — 1271
385 — 1060
1207 — 2631

PROPOSED RULES:

37 — 776
39 — 1762, 3483, 3878
71 — 1605, 1763, 2249, 3311, 3484, 3746
121 — 1085, 2650
129 — 1085, 2650
253 — 781
298 — 1764
399 — 781, 1500

15 CFR

3 — 1583
30 — 2076
60 — 3466
377 — 2076
929 — 2378

16 CFR

13 — 753, 2078, 2079, 2381, 2633–2635, 3076, 3077
19 — 2383

16 CFR—Continued

20 ... 2383
31 ... 2383
33 ... 2383
37 ... 2383
49 ... 2383
53 ... 2383
65 ... 2383
72 ... 2383
76 ... 2383
84 ... 2383
85 ... 2383
87 ... 2383
97 ... 2383
99 ... 2383
108 ... 2383
109 ... 2383
110 ... 2383
111 ... 2383
119 ... 2383
120 ... 2383
121 ... 2383
122 ... 2383
124 ... 2383
125 ... 2383
126 ... 2383
127 ... 2383
129 ... 2383
133 ... 2383
134 ... 2383
137 ... 2383
139 ... 2383
140 ... 2383
143 ... 2383
147 ... 2383
148 ... 2383
155 ... 2383
163 ... 2383
164 ... 2383
166 ... 2383
167 ... 2383
168 ... 2383
171 ... 2383
172 ... 2383
173 ... 2383
179 ... 2383
180 ... 2383
183 ... 2383
188 ... 2383
189 ... 2383
190 ... 2383
211 ... 2383
212 ... 2383
213 ... 2383
216 ... 2383
219 ... 2383
225 ... 2383
301 ... 2635
1207 ... 2742
1512 ... 1061
1615 ... 1061
1616 ... 1061
1630 ... 1061

PROPOSED RULES:

Ch. I ... 3322
18 ... 2398
21 ... 2398
22 ... 2398
25 ... 2398
27 ... 2398
28 ... 2399
30 ... 2389
32 ... 2398
35 ... 2398
39 ... 2398
42 ... 2398

16 CFR—Continued

PROPOSED RULES—Continued

43 ... 2398
47 ... 2398
48 ... 2398
50 ... 2398
51 ... 2398
58 ... 2398
64 ... 2399
66 ... 2398
71 ... 2398
88 ... 2398
92 ... 2398
101 ... 2398
105 ... 2398
132 ... 2398
136 ... 2398
138 ... 2398
144 ... 2398
145 ... 2398
149 ... 2399
161 ... 2398
169 ... 2398
176 ... 2398
177 ... 2398
181 ... 2398
182 ... 2398
185 ... 2398
186 ... 2398
191 ... 2398
193 ... 2399
194 ... 2398
195 ... 2398
196 ... 2398
198 ... 2398
199 ... 2398
201 ... 2398
202 ... 2398
206 ... 2398
207 ... 2398
217 ... 2398
220 ... 2399
222 ... 2389
226 ... 2398
227 ... 2398
423 ... 3747
450 ... 1501
455 ... 1089, 2100
456 ... 2399

17 CFR

0 ... 2508
1 ... 3194
10 ... 2508
12 ... 3994
16 ... 3207
17 ... 3207
18 ... 3208
19 ... 3209
20 ... 3210
21 ... 3210
30 ... 3211
140 ... 3211
146 ... 3212
150 ... 3215
200 ... 1739
211 ... 3733, 3736
230 ... 1272
240 ... 1741
241 ... 3469

PROPOSED RULES:

230 ... 10
240 ... 1771
270 ... 2256
274 ... 2256

18 CFR

2 ... 2806, 3092
3 ... 3269, 3270
35 ... 3848
101 ... 3849
104 ... 3849
141 ... 3849
201 ... 3849
204 ... 3849
260 ... 3849

PROPOSED RULES:

3 ... 3096
35 ... 3746
154 ... 3096
260 ... 3096
701 ... 1921

19 CFR

153 ... 2820
159 ... 1273, 1275, 1467, 1468, 1587, 1588, 1741
161 ... 2383

PROPOSED RULES:

12 ... 1498

20 CFR

10 ... 2
405 ... 1491
617 ... 3079
901 ... 2080
902 ... 2080
903 ... 1493

PROPOSED RULES:

405 ... 1499
410 ... 1762
422 ... 1601
450 ... 1603
602 ... 776
614 ... 2828
620 ... 3095

21 CFR

1 ... 1156, 2636
2 ... 1891, 2383, 2636
8 ... 754
27 ... 1469
102 ... 1156, 2636
121 ... 1061, 1276, 1469, 3286, 3852
123 ... 1589
431 ... 2384, 3736
520 ... 1276, 1891, 2384, 2821
522 ... 2821
520 ... 1276, 1891, 2384, 2821, 3853
558 ... 1061, 1276, 1469, 1892, 3079
561 ... 1589
1308 ... 3287

PROPOSED RULES:

338 ... 1498, 3745
339 ... 1498, 3745
340 ... 1498, 3745
1304 ... 1498

23 CFR

230 ... 3080
820 ... 3080

PROPOSED RULES:

1204 ... 3315, 3317

24 CFR

82 — 1672
201 — 3267
203 — 1277
207 — 3081
213 — 1277, 3081
220 — 3081
221 — 3081
231 — 3081
234 — 1277, 3081
235 — 1168, 3470
236 — 3081
275 — 2821, 3081
300 — 2084
570 — 2766
888 — 2085, 3082, 3440
890 — 2344
1909 — 1062
1912 — 1062
1914 — 1062, 1470, 1751, 1893
1915 — 1277, 1472, 1751, 2240, 3085
1916 — 1277–1280
1917 — 1894–1898, 2645
1920 — 2645, 2646

PROPOSED RULES:

207 — 3481
213 — 3481
221 — 3481
232 — 3481
241 — 3481
242 — 3481
244 — 3481
282 — 3406
283 — 3406
570 — 2348
888 — 2098, 3094
1905 — 1499
1912 — 1500

25 CFR

232 — 1898
252 — 3288

PROPOSED RULES:

252 — 3309
131 — 1915

26 CFR

1 — 1063, 1280, 2636, 2642
31 — 1903

PROPOSED RULES:

1 — 1289, 1915, 2647
31 — 2087
41 — 768
48 — 768
142 — 768

27 CFR

4 — 1063
18 — 2642

PROPOSED RULES:

5 — 1077
178 — 3877
181 — 3877

28 CFR

0 — 3289
4 — 3853
4a — 3855

29 CFR

102 — 1478
1952 — 1904
2509 — 1906, 3289
2555 — 1906
2556 — 1906

PROPOSED RULES:

40 — 3486
697 — 3878
1910 — 3485, 3745
1926 — 3745
1952 — 1918

30 CFR

PROPOSED RULES:

250 — 3481

31 CFR

PROPOSED RULES:

223 — 1077

32 CFR

505 — 1286
820 — 1906

PROPOSED RULES:

888f — 2089
1452 — 3882

33 CFR

110 — 2086
117 — 2385, 3857
127 — 2086
157 — 1479
207 — 3291

PROPOSED RULES:

82 — 10
117 — 10, 754, 3745
127 — 755
208 — 3740

34 CFR

235 — 755

PROPOSED RULES:

Ch. I — 779

36 CFR

60 — 1590
606 — 1286
703 — 2229
1002 — 2385

PROPOSED RULES:

7 — 1600, 2826

37 CFR

1 — 756
2 — 756

38 CFR

1 — 3857
36 — 1913

39 CFR

225 — 3470

40 CFR

35 — 2912
52 — 1913, 2231, 3085, 3320, 3475
60 — 1913, 2232, 2332, 3826
61 — 1914
142 — 2916
180 — 762, 763, 2822
201 — 2184
204 — 2162
247 — 2356
414 — 902
418 — 2386

PROPOSED RULES:

52 — 1065, 1921, 2099, 2263
85 — 2264
86 — 2022
104 — 1765
180 — 2829, 2830
245 — 2359
414 — 914
1510 — 2396

41 CFR

1–1 — 3737
1–16 — 3737
4–1 — 1742
7–7 — 1914
7–15 — 1914
8–1 — 3292
8–4 — 3292
8–16 — 3293
Ch. 9 — 3293
9–3 — 2388
14–2 — 763
14–18 — 763
101–11 — 3738
101–26 — 3293
101–27 — 3858
105–54 — 2235
114–40 — 2237
114–50 — 3086

PROPOSED RULES:

24–1 — 3220
24–2 — 3220
24–3 — 3220
24–4 — 3220
24–7 — 3220
24–11 — 3220
24–13 — 3220
24–16 — 3220
24–30 — 3220
24–50 — 3220
51–5 — 1764

42 CFR

PROPOSED RULES:

23 — 3822
57 — 3552
83 — 1757, 2249

43 CFR

2090 — 1598
2096 — 1597
2610 — 1597
2740 — 1598
3300 — 3737, 3859
4110 — 3298

PUBLIC LAND ORDERS:

5568 — 2823, 3859

PROPOSED RULES:

2 — 2826
3520 — 2648
5400 — 3877

45 CFR

17 — 2
100 — 1395
100b — 1395
117 — 1395
121 — 1395
130 — 1395
141 — 1395
173 — 1395
180 — 1876
249 — 2198
250 — 2198

PROPOSED RULES:

103 — 2252
1336 — 2046

46 CFR

30 — 3086, 3842
32 — 3843
34 — 3846
42 — 1470
146 — 763, 2086
151 — 3086
294 — 3298
536 — 765

47 CFR

1 — 1286, 1372
2 — 2389, 3859
73 — 2389, 3737
76 — 1063, 1742, 3860
78 — 3718
83 — 3299
87 — 1598, 2389, 2390
89 — 3863
95 — 3299
97 — 1482, 2824

47 CFR—Continued

PROPOSED RULES:

0 — 2100
1 — 2100, 2396, 2397
2 — 3879
43 — 1290
68 — 778
73 — 1088, 1089, 1291, 1500, 1501, 3880
76 — 1606
81 — 2398
83 — 2397, 2398, 3321
93 — 3879

49 CFR

1 — 1288
25 — 3300
173 — 3477
178 — 3869
179 — 3869
255 — 2524
257 — 2525
567 — 3478
571 — 4, 765, 1066, 1483, 1598, 2391, 3478, 3870–3872, 3874
575 — 1066
1001 — 2824
1002 — 1483, 2824
1007 — 3087
1033 — 4, 2644, 3090, 3091
1045 — 1484
1048 — 3305
1056 — 1742
1100 — 1485
1125 — 3402
1132 — 1485
1133 — 1486
1134 — 3091

49 CFR—Continued

1141 — 1486
1151 — 1486

PROPOSED RULES:

173 — 1919, 2829
178 — 1919, 2829
395 — 3311
567 — 3315
571 — 1763, 2828, 3485, 3878
575 — 3315
577 — 3485
579 — 3485
1003 — 1923
1048 — 2254, 3333
1049 — 2254
1100 — 1923
1104 — 1923
1043 — 779
1056 — 1607, 1608
1084 — 779
1204 — 2100
1260 — 2100
1261 — 2100

50 CFR

17 — 1915
21 — 2237
28 — 766, 1743
33 — 2240, 3305
240 — 1067
260 — 2395
501 — 4
510 — 3306
520 — 3307

PROPOSED RULES:

17 — 3877

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	*Date*	*Pages*	*Date*
1–747	2	2225–2363	15
749–1034	5	2365–2626	16
1035–1266	6	2627–2803	19
1267–1464	7	2805–3071	20
1465–1575	8	3073–3267	21
1577–1735	9	3269–3453	22
1737–1884	12	3455–3731	23
1885–2065	13	3733–3846	26
2067–2224	14	3847–4010	27

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 75-NW-42-AD; Amdt. 39-2501]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing 737 Series Airplanes

Amendment 39-2369, AD 75-20-02, requires inspection for wear and replacement as necessary of the trailing edge flap power unit worm and worm gear in accordance with Boeing Service Bulletin Nos. 737-27-1041 and 737-27-1076 on Boeing 737 series airplanes. After the issuance of Amendment 39-2369, terminating action for the directive was developed and approved. Therefore, the airworthiness directive is being amended to provide for the terminating action.

Since this amendment provides, as an option, terminating action and relieves a burden, notice and public procedure hereon are unnecessary and the amendment may be effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of the Federal Aviation Regulations, Amendment 39-2369, AD 75-20-02, is further amended as follows:

1. Revise the effectivity in paragraph A to read "Airplane Line Nos. 1 through 269" rather than "Airplane Line Nos. 1 through 270."

2. Revise paragraph F to read: "F. The inspections required by this directive may be terminated when the mechanical trailing edge flap asymmetry system has been replaced with the electrical system in accordance with Boeing Service Bulletin No. 737-27-1079 and;

1. A new worm gear has been installed in the trailing edge flap drive power unit in accordance with Boeing Service Bulletin No. 737-27-1076, or the existing worm gear has been inspected in accordance with Service Bulletin No. 737-27-1076 and no perceptible wear groove can be identified on the side of any tooth, or other modifications approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region are made and,

2. A new worm has been installed in the trailing edge flap power drive unit in accordance with Boeing Service Bulletin No. 737-27-1041 Revision 4, or the existing worm has been inspected in accordance with Service Bulletin No. 737-27-1041 Revision 4 and no perceptible wear groove can be identified in the side of any tooth, or other modifications approved by Chief, Engineering and Manufacturing Branch, FAA Northwest Region are made.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive, who have not already received these documents from the manufacturer, may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 9, 1976.

(Sec. 313(a), 601, 603, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Issued in Seattle, Wash., January 19, 1976.

C. B. WALK, JR.,
Director,
Northwest Region.

NOTE: The incorporation by reference provisions in the document were approved by the Director of the FEDERAL REGISTER on June 19, 1967.

[FR Doc.76-2259 Filed 1-26-76;8:45 am]

[Docket No. 76-GL-1, Amdt. 39-2500]

PART 39—AIRWORTHINESS DIRECTIVES

Prestolite ALV-9400 Series Alternators

Undetermined circumstances have caused slip ring end bearing failures on Prestolite ALV-9400 series gear driven alternators, which have resulted in alternator failure and damage to the engine. At this time the cause for these failures have not been determined, however, there is an indication that a bearing and lubricant condition check will reveal impending failures, and extend alternator service life. At such time that design corrective action is developed an amendment to this airworthiness directive, if appropriate, will be issued. Since this condition is likely to exist or develop in other installations of the same type, an airworthness directive is being issued to require checks of these units, removal or repair of those units found to be defectiye, and replacement with a serviceable alternator.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, (14 CFR 11.89 and FR 39-13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

PRESTOLITE. Applies to Prestolite ALV-9400 through ALV-9410 series gear driven alternators.

For aircraft having Prestolite ALV-9400 through ALV-9410 series alternators with more than 100 hours time in service compliance is required within the next 25 hours time in service after the effective date of this AD unless already accomplished within the last 75 hours time in service, and thereafter at intervals not to exceed 100 hours time in service from the last check.

To detect defective alternator slip ring end bearings and minimize the probability of in-service failures, accomplish the following:

Remove the slip ring end bearing cover by using a small sharp chisel, knife blade, or screwdriver to pry it out of the alternator slip ring head. Care must be taken not to damage the end head or bearing cover. If the bearing cover is damaged during removal it must be replaced.

Without further disassembly visually inspect the bearing and shaft end for discoloration or any sign of overheating or wear. Pay particular attention to the bearing inner and outer race.

If there is any sign of overheating or an indication that the rotor shaft has been turning in the inner race or the outer race has been turning in the end head, the alternator must be removed and repaired.

If the rotor shaft has been turning in the bearing inner race, the rotor and bearing must be replaced. If the bearing outer race has been turning in the end head, the bearing and end head must be replaced.

Check the bearing grease for any sign of overheating or contamination such as dirt, or metal filings. If the grease is a dark brown or black color, or is so contaminated, the alternator must be removed and the bearing replaced.

If the bearing shows no sign of discoloration, overheating, wear, or contamination, the bearing only (not the entire cavity) should be filled with Chevron BRB#2 or Chevron SRI#2 grease or an equivalent approved by Chief, Engineering and Manufacturing Branch, Great Lakes Region. At this time we are not aware of an equivalent lubricant for this application.

NOTE: Refer to Continental Service Bulletin No. TCM M75-30 for further information concerning this subject. The checks required by this AD may be performed by the pilot.

Operators who have not kept records of hours time in service on individual alternators shall substitute aircraft hours time in service in lieu thereof.

This amendment becomes effective February 2, 1976.

(Secs. 313(a), 601, (a), 603, Federal Aviation Act of 1958; (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Issued in Des Plaines, Ill., on January 19, 1976.

JOHN M. CYROCKI,
Director,
Great Lakes Region.

[FR Doc.76-2258 Filed 1-26-76;8:45 am]

[Airspace Docket No. 75-SW-71]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate a transition area at Paducah, Tex.

On November 7, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 52051) stating the Federal Aviation Administration proposed to designate a transition area at Paducah, Tex.

Interested persons were afforded an opportunity to participate in the rulemaking through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., March 25, 1976, as hereinafter set forth.

In § 71.181 (41 FR 440), the following transition area is added:

PADUCAH, TEX.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Paducah, Tex., Dan E. Richards Airport (latitude 34°01'30" N., longitude 100°-17'00" W.).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on December 15, 1975.

ALBERT H. THURBURN,
Acting Director, Southwest Region.

[FR Doc.76-2260 Filed 1-26-76;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. RM74-15]

PART 35—FILING OF RATE SCHEDULES

Order Granting Rehearing for Purpose of Further Consideration and Granting Interventions

JANUARY 20, 1976.

On November 21, 1975, the Commission issued its Order No. 541 which amended § 35.1 of its regulations under the Federal Power Act, 18 CFR 35.1, by redesignating the existing paragraph (d) as paragraph (e) and by adding a new paragraph (d). This new paragraph required that, effective March 1, 1976, certain rate schedules filed with the Commission[1] must expressly indicate whether or not service was to be rendered under a "fixed rate contract" by including one of two provisions in the tendered rate schedule.

Applications for rehearing were filed on December 22, 1975, by the American Public Power Association (APPA) and by a group of municipalities and municipal electric companies (Cities).[2] These applications raise several issues which require further consideration. We will therefore grant these two applications for rehearing for the sole purpose of further consideration of Order No. 541.

Cities have also sought leave to intervene in these proceedings. In our notice of proposed rulemaking issued April 22, 1974, we stated that any interested person could submit data, views and comments in writing concerning the matters proposed in the instant docket not later than June 6, 1974 (Mimeo, pp. 2-3). Having thus permitted all interested persons to participate in this proceeding it was unnecessary to require formal requests to intervene. All persons who filed comments in this proceeding will therefore be made parties whether or not they formally petitioned to intervene. While Cities did not file comments prior to the issuance of Order No. 541, it did file a timely application for rehearing in which it raised several objections to our proposed regulation. We therefore believe that it would also be in the public interest to grant Cities' petition to intervene as a party in this proceeding.

The Commission further finds. (1) Good cause exists to permit the intervention in this proceeding of all persons listed in Appendix A below.

(2) Good cause exists for granting the applications for rehearing filed by APPA and Cities for the sole purpose of giving further consideration to Order No. 541.

The Commission orders. (A) Those persons listed in Appendix A below are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission; *Provided, however,* That the participation of these parties shall be limited to matters affecting the rights and interests specifically set forth in their comments or in their petitions to intervene, *And provided, further,* That the admission of these parties as intervenors shall not be construed as recognition that they might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(B) The applications for rehearing of Order No. 541 filed by APPA and Cities are hereby granted for the sole purpose of giving further consideration to Order No. 541.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY KIDD PEAK,
Acting Secretary.

APPENDIX A

Consolidated Edison Company of New York
Consumers Power Company
Georgia Power Company
Gulf Power Company
Louisiana Power and Light Company
New England Power Company
Northeast Utilities Companies
Northern States Power Company (Minnesota)
Ohio Edison Company
Pennsylvania Power and Light Company
Public Service Company of Indiana
Public Service Company of Oklahoma
Southern California Edison Company
Southwestern Electric Power Company
Edison Electric Institute
Cities of Crawfordville, Frankfort, Logansport, Peru and Washington, Indiana
American Public Power Association
National Rural Electric Cooperative Association, and 19 rural electric cooperatives, 2 municipal utility associations, 1 consumer association serving cooperatives, municipals and public power districts.
Environmental Action Foundation
Massachusetts Municipal Wholesale Electric Company, ElectriCities, the Cities of Anaheim and Riverside, California, and the Cities of Alachua, Bartow, Bushnell, Chattahoochee, Fort Meade, Lake Helen, Mount Dora, Newberry, Ocala, Quincy, Leesburg and Williston, Florida.

[FR Doc.76-2323 Filed 1-26-76;8:45 am]

[Docket No. RM76-6; Order No. 545]

PART 35—FILING OF RATE SCHEDULES

Maximum Time Interval

JANUARY 20, 1976.

Amendment to § 35.13 of the Commission's regulations under the Federal Power Act.

On September 3, 1975, the Commission issued a notice of proposed rulemaking in Docket No. RM76-6 providing for the amendment of § 35.13(b)(4)(iii) of its regulations to specify four months as the maximum time interval between the time of filing of a rate increase and the end of the period of actual cost data supporting the increase. The present regulations are unspecific as to this time interval and only require that such data be "for the most recent twelve consecutive months for which actual data are available." Responses were received from, or on behalf of, 48 jurisdictional utilities[1], 47 of whom protested that the proposed four month interval is too short and urged the adoption of a longer time interval or no amendment to the current regulations. A six months' interval was proposed by 24 of the 47 dissenters. The cooperatives responding favored the proposal as a step toward eliminating the practice of filing outmoded actual data and, subsequently, updating projected data with actual experience.

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[1] The requirements of (d) applied to rate schedules covering "the transmission or sale of firm power for resale to an all-requirements customer, whether filed as an initial rate schedule in accordance with § 35.12 or whether filed as a change in accordance with § 35.13 where such change is to an existing rate schedule whose term has expired, or where the term is to be extended * * *." Rate schedules tendered for filing prior to March 1, 1976 and contracts executed prior to March 1, 1976, were expressly excluded from the requirements of paragraph (d).

[2] This latter group is composed of (1) the Massachusetts Municipal Wholesale Electric Company, a utility regulated by the Commonwealth of Massachusetts and wholly controlled by the municipal electric departments and plants of twenty-five Massachusetts cities and towns; (2) the ElectriCities of North Carolina, an unincorporated association whose members are representatives of all municipalities in North Carolina and certain municipalities in Virginia; (3) two cities in California; and (4) twelve cities in Florida.

[1] Respondents are set forth in the Attachment to this order.

[2] Public Service Electric & Gas Company supported the proposal.

All of the jurisdictional companies responding, except for one[2], contended that the proposed four month time limitation would be impractical to apply, burdensome to utility staff, and ultimately costly to consumers. Since the pertinent expense and operational data could not be assembled until after the selected 12 month Period I had ended, the utilities stated that the actual time allowable for preparing the case-in-chief would be reduced. As a consequence, it would require extensive overtime work by utility staff or the hiring of consultants or additional personnel and that such increased personnel costs would be passed on to the customers in the form of higher charges reflecting the rate case expense. Many of the respondents specified operational problems indicating why it would be difficult, if not impossible, to meet the four months requirement.

Our review of the responses to the notice in Docket No. RM 76-6 indicates that the proposed amendment to § 35.13 of the Commission's regulations under the Federal Power Act is necessary in order to eliminate the current ambiguity and to provide a standard for utility companies selecting a Period I in the preparation of a rate filing. However, we believe that the four month interval proposed in our notice may be burdensome and shall substitute a requirement that no more than seven months separate the end of Period I and the date of tender for filing of a proposed notice of change in a rate schedule.

Our action herein is consistent with the policy of the Commission since the Interstate order[3] was issued September 10, 1975. In Interstate, we were dealing with data that were 7½ months old and made the determination that such data were too stale to be "the most recently available" and therefore rejected Interstate's filing for failure to comply with § 35.13 (b) (4) (iii) of the Regulations. Since that action, we have consistently refused to accept rate filings containing Period I data which were more than seven months old.[4] It has been our experience that the seven month interval is a feasible requirement. It allows a utility sufficient time to prepare a filing from book data and at the same time provides recent data from which just and reasonable rates may be determined.

The Commission finds. (1) The notice and opportunity to participate in this proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments and suggestions in the manner as described above are consistent and in accordance with all procedural requirements therefor as prescribed in section 553 of Title 5 of the United States Code.

(2) The amendment of this Commission's regulations under the Federal Power Act herein prescribed are necessary and appropriate for the administration of the Federal Power Act.

The Commission, acting pursuant to the authority granted by the Federal Power Act, particularly by sections 205, 206, 301, 304 and 309, (52 Stat. 822, 830, 76 Stat. 72; 15 U.S.C. 717c and 717O), orders:

(A) Section 35.13(b) (4) (iii) of the regulations under the Federal Power Act (Title 18, Part I, Subchapter B of the Code of Federal Regulations) is hereby amended, to read:

§ 35.13 Filing of changes in rate schedules.

* * * * *

(b) * * *

(4) * * *

(iii) The statement of the cost of service should contain unadjusted system costs for the most recent twelve consecutive months for which actual data are available (Period I) including return, taxes, depreciation, and operating expenses, and an allocation of such costs to the service rendered: *Provided, however,* That the last day of the 12 months of actual experience shall not be more than seven months prior to the date of tender for filing the proposed notice of change in rates and charges. The statement of cost of service shall include an attestation by the chief accounting officer or other accounting representative of the filing public utility that the cost statements and supporting data submitted as a part of the filing which purport to reflect the books of the public utility do, in fact, set forth the results shown by such books. Following is a description of statements A through O required to be filed pursuant to this subparagraph. In addition, the public utility shall file statements A through O together with related work papers based on estimates for any twelve consecutive months begining after the end of Period I but no later than the date the rates are proposed to become effective (Period II). Full explanation of the bases of each of the estimated figures shall be included, Period II shall be the "test period" * * *

* * * * *

(B) This order is effective as of the date published.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY KIDD PEAK, *Acting Secretary.*

ATTACHMENT A

[Docket No. RM 76-6]

PARTIES SUBMITTING COMMENTS IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

I JURISDICTIONAL RESPONDENTS:

1. American Electric Power Service Corporation on behalf of its operating affiliates in the American Electric Power System.
2. Arizona Public Service Company.
3. Arkansas Power & Light Company.
4. Boston Edison Company.
5. Carolina Power & Light Company.
6. Central Illinois Public Service Company.
7. Central Maine Power Company.
8. Central Vermont Public Service Corporation jointly with Jersey Central Power & Light Company, Metropolitan Edison Company, Montaup Electric Company, New England Power Company, Pennsylvania Electric Company, and Wisconsin Electric Power Company.
9. Consumers Power Company.
10. The Detroit Edison Company.
11. Florida Power & Light Company.
12. Georgia Power Company.
13. Gulf Power Company.
14. Idaho Power Company.
15. Illinois Power Company.
16. Interstate Power Company.
17. Louisiana Power & Light Company.
18. Middle South Services, Inc., on behalf of its four operating affiliates in the Middle South System.
19. Mississippi Power Company.
20. Mississippi Power & Light Company.
21. Northeast Utilities Service Company on behalf of its four operating affiliates in the Northeast Utilities System.
22. Northern States Power Company (Wisconsin).
23. Ohio Edison Company.
24. Pacific Gas and Electric Company.
25. Philadelphia Electric Company.
26. Public Service Company of Indiana.
27. Public Service Company of New Hampshire.
28. Public Service Company of Oklahoma.
29. Public Service Electric and Gas Company.
30. Southern California Edison Company.
31. Southern Services, Inc.
32. The Toledo Edison Company.
33. West Texas Utilities Company.

II NON-JURISDICTIONAL RESPONDENTS:

1. North Carolina Electric Membership Corporation, Old Dominion Electric Cooperative, Oglethorpe Electric Membership Corporation on behalf of their member distribution cooperatives in the States of North Carolina, Virginia and Georgia, respectively.

[FR Doc.76-2322 Filed 1-26-76;8:45 am]

[Docket Nos. R-424, R-446; Order No. 530-A]

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR CLASS A AND CLASS B PUBLIC UTILITIES AND LICENSEES

PART 104—UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES (CLASS C AND CLASS D)

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES

PART 204—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES (CLASS C AND CLASS D)

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Order Denying Applications for Rehearing and Clarifying Prior Order

JANUARY 19, 1976.

Accounting for Premium, Discount and Expense of Issue, Gains and Losses on Refunding and Reacquisition of Long-Term Debt, and Interperiod Allocation of Income Taxes, Docket No. R-424; Amendments to the Uniform Systems of Accounts for Classes A, B and

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[2] Interstate Power Company, ---- FPC ----, Docket No. ER76-70.

[4] See Montaup Electric Company, ---- No. ER76-46; Consumers Power Company, ---- FPC ----, issued October 29, 1975, FPC ----, issued November 3, 1975, in Docket in Docket No. ER76-45; Western Power Division, Central Telephone and Utilities Corporation, ---- FPC ----, issued November 5, 1975, in Docket No. ER76-92; Boston Edison Company, ---- FPC ----, issued November 14, 1975 in Docket No. ER76-90; and Toledo Edison Company, ---- FPC ----, issued December 31, 1975, in Docket No. ER76-132.

C Public Utilities and Licensees and Natural Gas Companies; Deferred Income Taxes, Docket No. R-446.

On July 18, 1975, Public Systems, a group of municipally and cooperatively owned electric systems,[1] and a group of four privately owned electric utility corporations[2] (Private Group) each filed applications for rehearing of the Commission's Order No. 530 issued June 18, 1975, in Docket Nos. R-424 and R-446. By order issued August 15, 1975, granted rehearing of Order No. 530 for the purpose of further consideration of the arguments raised by the applications.

On August 27, 1975, a second group of privately owned electric utility corporations[3] (Second Private Group) filed a motion for extension of time in which to file a response to Public Systems argument presented in connection with the rehearing. By Order issued September 3, 1975, we granted an extension of time by giving notice that the time within which to respond to the Order Granting Application for Rehearing for the Purpose of Further Consideration, issued August 15, was extended from August 30, 1975, to September 15, 1975. The Second Private Group and Gulf Power Company, a privately owned electric utility company, filed their responses with the Commission September 15, 1975.[4]

Private Group's application states that they are in agreement with Order No. 530 in all respects save for one minor item. Private Group points out there are certain companies who are presently employing a net of tax allowance for funds used during construction rate in accordance with authorization of state regulatory agencies having jurisdiction over their rates and would like to continue to do so. Therefore, it is suggested that it would be helpful if a clarification were made that the Commission intended in Order No. 530 to permit the use of net of tax allowance for funds used during construction accrual rates under such circumstances by an appropriate provision of the Uniform System of Accounts.

The accounting for deferred income taxes prescribed in Order No. 530 was structured to accommodate utilities under the rate jurisdiction of the various state regulatory bodies that may or may not authorize deferred tax accounting for rate purposes (See General Instruction 18). If a net of tax allowance for funds rate is prescribed by a regulatory body in setting the rate levels of utilities, we consider that such treatment is consistent with he intent of Order No. 530 and it is not necessary for utilities to set aside deferred income taxes related to the interest component of the allowance for funds rate. In light of this, we do not believe that it is necessary to make provision in the Uniform System of Accounts to cover this matter.

Public Systems argue that Order No. 530 should be vacated, or, in the alternative, remanded for the development of a more extensive evidentiary record. Public Systems argue that the normalization prescribed by Order No. 530 violates the actual taxes paid principle in that it permits utilities to collect taxes in its rates in excess of taxes paid to the Internal Revenue Service. They also argue that the Commission did not require a utility wishing to use normalization with respect to some or all of the classes of items covered by Order No. 530, to make a showing that normalization was appropriate since there was a tax deferral rather than a tax savings with respect to that class of items.

The Second Private Group responded to Public System's allegations stating, *inter alia*, that Order No. 530 is valid and should be affirmed as is because normalization is consistent with Opinion No. 11 of the Accounting Principles Board of the American Institute of Certified Public Accountants,[5] it provides needed cash flow for the industry, it reduces external financing requirements, and it increases the financial stability of companies and improves their fixed charge coverages.

With respect to Public Systems' allegation that normalization would violate the "actual taxes paid principle," we note that in Order No. 530 we stated that (mimeo, pp. 8-9)

> The Tax Reform Act of 1969 gave utilities the absolute right to elect to abandon flow-through with respect to post-1969 expansion utility property and, with agency approval, the right to defer, i.e., normalize, the tax effect related to liberalized depreciation. In Order Nos 404 and 404-A, we gave the requisite regulatory approval to all utilities making such election to adopt normalized rate and accounting treatment of the tax effects of liberalized depreciation on post-1969 expansion utility property.
>
> Furthermore, in Texas Gas Transmission Company, we authorized the adoption of normalization for accounting and rate purposes on pre-1970 and certain post-1969 properties on the basis that, employing the standard enunciated in Alabama-Tennessee, the use of liberalized tax depreciation on such properties would no longer produce a permanent tax savings, but rather a tax deferral. (Footnotes omitted)

With respect to the normalization of items coming under Order No. 530, the Commission noted in Order No. 530 that both electric utilities and natural gas pipelines faced severe cash shortages and that use of normalization would contribute to cash flow and allow for improved fixed charge coverages, (mimeo p. 10). Therefore, the Commission found that, "* * * as a matter of general policy, that it would favor ratemaking treatment upon a normalization basis, provided appropriate factual showings are made in each instance". The Commission continued:

> Consequently, the Commission contemplates that in each rate proceeding, where an applicant utility (electric or gas) seeks to avail itself of these normalization procedures, it shall present a factual showing appropriate to sustain its claim; and that any entity opposing the requested procedures shall present a factual showing appropriate to sustain its counterclaim. It is contemplated that these showings shall be in the nature of an obligation of coming forward with evidence to support the respective claims advanced. The Commission's ultimate findings and conclusions on these and all other questions shall reflect the substantial evidence rule of the Federal Power Act and Natural Gas Act. Thus, we are herein adopting comprehensive income tax allocation accounting for all items creating timing differences between the periods in which transactions affect the determination of pre-tax book income, when such items receive normalized treatment for rate purposes. To require accounting for these type items prior to their allowance as an item of expense for rate treatment would require financial statements to be prepared which do not reflect the economic effects of rates. Furthermore, to minimize regulatory conflicts (especially in those cases where a utility finds itself subject to rate jurisdiction by more than one regulatory body) we are providing that comprehensive interperiod income tax allocation not be followed except in those cases where a regulatory body allows such accounting in establishing rates. We are also directing full public disclosure in financial statements where comprehensive interperiod income tax allocation is not being followed.

However, we note that in approving normalization of the tax effect of liberalized depreciation, the Courts have required a finding that a tax deferral will occur rather than a permanent tax savings.[6] That is, with respect to liberalized depreciation, it must be shown that the deferred taxes accrued in Account 282 will continue to grow for period and then begin to decline after the so-called "cross-over" point is reached.

The "cross-over" point is where the tax deductions from the use of liberalized depreciation are less than the tax deductions which result from the use of straight line depreciation. After this "cross-over" point is reached and passed, the deferred taxes accrued by the utility in Account 282 will be used as a credit to the cost of service to offset the declining tax deductions from the use of liberalized depreciation. Thus, in cases where a tax deferral is shown, the Courts have approved normalization of the tax effect of liberalized depreciation because it prevents a shifting of a tax burden to future consumers of the utility in return for artificially lower rates to present-day ratepayers.

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[1] See 40 FR 26981, June 26, 1975.

[1a] See Appendix A below.

[2] Central Illinois Light Company, Jersey Central Power and Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company.

[3] Alabama Power Company, Central Illinois Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, New England Power Company and Pennsylvania Electric Company.

[4] Separate statements supporting the Second Private Group's September 15, 1975, pleading were filed by: Iowa Power and Light Company, Kansas City Power & Light Company, Iowa-Illinois Gas and Electric Company, Arthur Anderson & Company, Public Service Company of Indiana, Southern California Edison Company, Baltimore Gas and Electric Company, Georgia Power Company, West Texas Utilities Company, Consumers Power Company, The Montana Power Company and Coopers & Lybrand.

[5] See Order No. 530, mimeo p. 5, Footnote 1.

[6] Memphis, et al. v. F.P.C., 500 F. 2d 798 (D.C. Cir. 1974); See also discussion of this issue and cases listed in Alabama-Tennessee Natural Gas Company, 31 FPC 208, 221 (1974) aff'd sub nom. Alabama-Tennessee Natural Gas Company v. FPC, 359 F. 2d 318 (CA5 1966).

In light of the above, we of course would require a showing by the utility requesting normalization of the tax effect of a class of items covered by Order No. 530 (such as differences between tax and book lives of property) that a tax deferral rather than a tax saving would occur and that tax normalization, with respect to that class of items, is therefore appropriate. Thus, prior to receiving normalized rate treatment with respect to a class of items, a showing of a tax deferral must be made with respect to that class of items.

In making the appropriate showing in a rate case, factors such as increased cash flow and fixed charge coverage are of course relevant in determining whether or not normalization is appropriate. But such findings, in the absence of a showing of a tax deferral, will not be sufficient to justify normalization with respect to a class of items. Moreover, we believe that, in general, the proper place to consider issues such as the need for increased cash flow, financial stability of the utility, fixed charge coverages and other risks associated with a utility's operation is in the area of setting a just and reasonable rate of return on common equity in rate proceedings before this Commission.

It should be noted that where a state regulatory commission has authority over a majority of the utility's business and approved normalization with respect to a class of items in a rate proceeding and normalized accounting is therefore adopted for the entire utility business, including that portion subject to the jurisdiction of this Commission, (See General Instruction 18) the utility must still make an appropriate showing of a tax deferral with respect to that class of items in a rate proceeding before this Commission in order to receive the effect of normalization in its jurisdictional rates.

At this point, we believe it appropriate to answer the allegation of Public Systems that we may not adopt normalization with respect to the classes of items covered by Order No. 530 absent authorization from Congress. This argument presumably is based upon the fact that Congress, in passing the Tax Reform Act of 1969, dealt with the appropriate regulatory treatment of the tax effect of liberalized depreciation. We reject this contention because it is clear from the cases interpreting the relevant portions of the Tax Reform Act of 1969, that Congress had, in effect, limited the pre-existing authority of this Commission and others to, upon an appropriate record, adopt flow-through or normalized accounting and rate treatment with respect to the tax effects of liberalized depreciation.[7] Moreover, we note with respect to certain arguments advanced by the Second Private Group, that, except for certain items specifically covered by the Tax Reform Act of 1969, nothing in the Tax Reform Act of 1969, nor the legislative history related thereto, changes the requirement that a utility must show a tax deferral with respect to a class of items in order to be allowed by this Commission to adopt normalized accounting and rate treatment of the tax effects of that class of items.[8]

Public Systems argue that the data relating to the cash flow requirements of gas and electric utilities in the record in this case is stale and therefore provides an insufficient basis of support for Order No. 530. Petitioners have supplied extensive graphs, charts and statements in support of their contention that the financial health of the economy in general, and of utilities in particular, has improved to such an extent that the cash flow which normalization would generate is no longer necessary. Moreover, petitioners argue that the cash flow generated by normalization may be harmful to the shareholders of the utilities by encouraging "highly levereged capital structures" with high debt ratios.

While we agree with petitioners that the economic picture for the economy in general, and for utilities in particular, has improved somewhat in recent months, we are not persuaded that our general findings of the need for increased cash flow for utilities in general are not still valid. Moreover, we are not persuaded that petitioners allegations with respect to adverse capitalization ratios are valid.

In any event, we believe that the appropriate forum to decide this issue is in a rate proceeding before this Commission wherein a utility will have the opportunity to show its own particular cash flow needs, and all parties will have an opportunity to rebut such claims. Accordingly, we shall deny Public Systems application with respect to this issue.

Public Systems also argue that use of normalization by electric utilities in rates subject to this Commission's jurisdiction will result in a "price squeeze" vis-a-vis the utility's retail industrial rates. Presumably, Public Systems is referring to situations wherein the state regulatory authority is adhering to flow-through of the tax benefits of certain classes of items which this Commission has permitted normalized rate treatment. Petitioners rely upon the decision of the U.S. Court of Appeals for District of Columbia Circuit, in "Conway, et al. v. F.P.C." 510 F. 2d 1264 (CADC 1975) in support of this allegation.

As petitioners are undoubtedly aware, the United States Supreme Court, on November 11, 1975, in Case No. 75-342, granted this Commission's Petition for Writ of Certiorari relating to this case. However, even assuming, *arguendo*, that the Conway decision is upheld on appeal, we believe that the effects of that decision would have to be considered on a case-by-case determination in individual rate proceedings.

Public Systems argue that there are no benefits to ratepayers from the use of normalization with respect to a class of items. We disagree. In those instances where we approve normalization for rate purposes of the tax effect of a class of items, such deferred taxes are placed in Accounts 282 and 283, and are related to rate base items, we shall, of course, continue our policy of deducting the deferred taxes in those amounts from rate base.[9] Consistent with past precedent, we shall also continue to include amounts accrued in Account 281 in the utility's capital structure at zero percent return. More importantly, however, when normalized rate treatment is adopted for a class of items, it will only be where a showing of a tax deferral is made. Thus, by use of normalization of the tax effect relating to a specific class of items, the Commission will be requiring utilities to accrue deferred taxes which will benefit future ratepayers as a credit to the cost to be collected from such ratepayers or the time the "cross-over" point is reached and passed. Moreover, normalization will offer a greater chance for rate stability for ratepayers. Thus, we believe that where the showings required are made in a rate case with respect to a class of items covered in Order No. 530, the use of normalization with respect to a class of items will comport with the Supreme Court's standard that * * *

> Rates are just and reasonable' only if consumer interests are protected and if the financial health of the pipeline in our economic system remain strong[10]

This finding applies also to electric utility rates.

We note further that on December 17, 1975, a group of privately owned electric utility corporation (Third Private Group) comprised of members of both the "Private Group" and "Second Private Group" filed a motion for oral argument in the instant proceeding, as well as in Docket No. RM75-13. Third Private Group argues *inter alia*, that oral argument would be helpful in light of the tremendous financial impact these proposals would have for the electric industry and in light of the interrelationship between the normalization issue in the instant proceeding and the construction work in progress (C.W.I.P.) in rate base issue in Docket No. RM75-13. On December 31, 1975, Public Systems filed an answer to Third Private Group's motion which did not oppose the request for argument, but did respond to several of the substantive arguments raised by Third Private Group's pleading.

Because of the completeness of the pleadings filed on rehearing in Docket Nos. R-424 and R-446 oral argument would not be helpful in aiding the Commission's determination in Docket Nos. R-424 and R-446. Accordingly, we shall

[7] We refer petitioners to F.P.C. v. Memphis, et al., 411 U.S. 458 (1973) wherein the United States Supreme Court thoroughly discussed this point in interpreting the legislative history, and thus the meaning, of the Tax Reform Act of 1969.

[8] See Footnote 7 in this order.

[9] See: Opinion No. 578, 43 FPC 824 (1970); Tennessee Gas Pipeline Company, ____ FPC ____ issued April 10, 1974, in Docket No. RP74-73.

[10] F.P.C. v. Memphis, et al., 411 U.S. at 474, 93 S. Ct. at 1732, citing to F.P.C. v. Hope Natural Gas Company, 320 U.S. 591, 64 S. Ct. 281 (1944).

deny Third Private Group's request for oral argument.[11]

In light of the above, we believe that the applications for rehearing filed on July 18, 1975, by both Private Group and Public Systems should be denied.

The Commission finds. The applications for rehearing filed on July 18, 1975, by Public Systems and Private Group present no facts or principles of law which would require modification of Order No. 530.

The Commission orders. (A) The applications for rehearing filed by Private Group and by Public Systems on July 18, 1975, are denied.

(B) Third Private Group's motion for oral argument in Docket Nos. R-424 and R-446 is hereby denied.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY KIDD PEAK,[12]
Acting Secretary.

APPENDIX A

PUBLIC SYSTEMS SPONSORING THE APPLICATION FOR REHEARING OF ORDER NO. 530

Alabama Electric Cooperative, Inc.
Allegheny Electric Cooperative, Inc.
City of Anaheim, California.
Delmarva Electric Cooperative, Inc.
ElectriCities of North Carolina and its members, the following municipalities:

North Carolina:

Albemarle	Laurinburg
Apex	Lexington
Ayden	Lincolnton
Belhaven	Louisburg
Benson	Lucama
Black Creek	Lumberton
Bostic	Macclesfield
Cherryville	Maiden
Clayton	Monroe
Concord	Morganton
Cornelius	Murphy
Dallas	New Bern
Davidson	Newton
Drexel	Oak City
Edenton	Pikeville
Elizabeth City	Pinetops
Enfield	Pineville
Farmville	Red Springs
Fayetteville	Robersonville
Forest City	Rocky Mount
Fountain	Scotland Neck
Fremont	Selma
Gastonia	Sharpsburg
Granite Falls	Shelby
Greenville	Smithfield
Hamilton	Southport
Hertford	Stantonsburg
Highlands	Statesville
High Point	Tarboro
Hobgood	Wake Forest
Hookerton	Walstonburg
Huntersville	Washington
Kings Mountain	Waynesville
Kinston	Wilson
LaGrange	Windsor
Landis	Winterville

Virginia:

Blackstone	Smithport
Culpeper	Cormelius
Franklin	Iron Cate
Harrisonburg	

Harrison Rural Electric Association, Inc.
Indiana Municipal Electric Association and its members, the following municipalities in Indiana:

Town of Bainbridge	City of Linton
Town of Bargersville	Town of Middletown
Town of Centerville	Town of Paoli
Town of Covington	Town of Pendleton
Town of Darlington	City of Rising Sun
Town of Edinburg	Town of Rockville
Town of Flora	City of Scottsburg
Town of Greendale	Town of South Whitley
City of Greenfield	Town of Thorntown
Town of Hagerstown	City of Tipton
Lawrenceburg Utilities	Town of Veedersburg
Lawrenceburg	Town of Waynetown
City of Lebanon	

Jackson Purchase Rural Electric Cooperative Association NEPCO Customer Rate Committee (successor to the Power Planning Committee of the Municipal Electric Association of Massachusetts, Inc.) and its members the following Massachusetts municipal light departments and plants:

Ashburnham	Merrimac
Boylston	Middleton
Danvers	North Attleboro
Georgetown	Paxton
Groton	Peabody
Hingham	Princeton
Holden	Shrewsbury
Hudson	Sterling
Hull	Templeton
Ipswich	Wakefield
Littleton	West Boylston
Mansfield	and
Marblehead	

Manchester Electric Company
New Hampshire Electric Cooperative, Inc., Littleton, New Hampshire
Northern California Power Agency and its members, the following California cities:

Alameda	Lompoc
Biggs	Palo Alto
Gridley	Redding
Healdsburg	Roseville
Lodi	Santa Clara
Ukiah	

and
Plumas Sierra Rural Electric Cooperative, Inc.
North Carolina Electric Membership Corporation.
Oglethorpe Electric Membership Corporation.
Old Dominion Electric Cooperative, Inc.
City of Riverside, California.
Southern Maryland Electric Cooperative, Inc.

[FR Doc.76-2321 Filed 1-26-76;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 75F-0279]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

ETHYLENE COPOLYMER, CHLOROSULFONATED

The Food and Drug Administration is amending the food additive regulations to provide for the safe use of ethylene copolymer, chlorosulfonated as a component of liners and covers for reservoirs intended for the storage of water for drinking purposes; effective January 27, 1976; objections by February 26, 1976.

Notice was given by publication in the FEDERAL REGISTER of August 16, 1973 (38 FR 22172) that a petition (FAP 3B2902) had been filed by E. I. du Pont de Nemours & Co., Wilmington, DE 19898, proposing that § 121.2562 (21 CFR 121.-2562) be amended to provide for the safe use of the additive ethylene copolymer, chlorosulfonated in contact with food.

The Commissioner, having evaluated data in the food additive petition and other relevant information, concludes that it would be more appropriate to establish a new food additive regulation than to amend § 121.2562 to provide for the safe use of ethylene polymer, chlorosulfonated as a component of covers and liners of reservoirs intended for the storage of water for drinking purposes.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 2.120), Part 121, Subpart F, is amended by adding a new section to read as follows:

§ 121.2636 Ethylene polymer, chlorosulfonated.

Ethylene polymer, chlorosulfonated as identified in this section may be safely used as an article or component of articles intended for use in contact with food, subject to the provisions of this section.

(a) Ethylene polymer, chlorosulfonated is produced by chlorosulfonation of a carbon tetrachloride solution of polyethylene with chlorine and sulfuryl chloride.

(b) Ethyleene polymer, chlorosulfonated shall meet the following specifications:

(1) Chlorine not to exceed 25 percent by weight.

(2) Sulfur not to exceed 1.15 percent by weight.

(3) Molecular weight is in the range of 95,000 to 125,000.

Methods for the above specifications are available upon request from the Food and Drug Administration, Bureau of Foods, Division of Food and Color Additives (HFF-330), 200 C St., SW., Washington, DC 20204.

(c) The additive is used as the article, or a component of articles, intended for use as liners and covers for reservoirs intended for the storage of water for drinking purposes.

(d) Substances permitted by § 121.-2562 may be employed in the preparation of ethylene polymers, chlorosulfonated, subject to any limitations prescribed therein.

(e) The finished ethylene copolymers, chlorosulfonated shall conform to § 121.2562 (e) and (g).

Any person who will be adversely affected by the foregoing order may at any time on or before February 26, 1976, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be

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[11] By order issued January, 1976, oral argument was scheduled in Docket No. RM75-13.

[12] Dissenting statement of Commissioner Watt filed as part of the original document.

adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Six copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this order. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective January 27, 1976.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

Dated: January 20, 1976.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.76-2263 Filed 1-26-76;8:45 am]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

[Docket No. 75N-0076]

PART 520—ORAL DOSAGE FROM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Trimethoprim and Sulfadiazine Tablets

The Commissioner of Food and Drugs has evaluated a new animal drug application (95-614V) sponsored by the Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709, proposing safe and effective use of trimethoprim and sulfadiazine tablets for treating bacterial infections in dogs. The application is approved, effective January 27, 1976.

The Commissioner is amending Part 520 to reflect this approval.

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 (21 CFR 2.120), Part 520 is amended by adding a section to read as follows:

§ 520.2610 Trimethoprim and sulfadiazine tablets.

(a) *Specifications.* Each tablet contains 120 milligrams of the drug (20 milligrams of trimethoprim and 100 milligrams of sulfadiazine) or 480 milligrams (80 milligrams of trimethoprim and 400 milligrams of sulfadiazine).

(b) *Sponsor.* See No. 011492 in § 510.-600(c) of this chapter.

(c) *Conditions of use.* (1) The drug is used in dogs where systemic antibacterial action against sensitive organisms is required, either alone or as an adjunct to surgery or debridement with associated infection. The drug is indicated where control of bacterial infection is required during the treatment of acute urinary tract infections, acute bacterial complications of distemper, acute respiratory tract infections, acute alimentary tract infections, wound infections, and abscesses.

(2) The drug is given orally at 30 milligrams per kilogram of body weight per day (14 milligrams per pound per day), or as follows:

Animal body weight (pounds):	Number of 120 mg tablets
Up to 9	1
10 to 19	2
20 to 29	3
30 to 40	4

	Number of 480 mg tablets
30 to 40	1
40 to 60	1½
60 to 80	2
80 to 110	3
Over 110	4

(3) The drug is given once daily. Alternately, especially in severe infections, the initial dose may be followed by one-half the recommended daily dose every 12 hours.

(4) Administer for 2 to 3 days after symptoms have subsided. Do not treat for more than 14 consecutive days.

(5) During long term treatment, periodic platelet counts and white and red blood cell counts are recommended.

(6) The drug should not be used in patients showing marked liver parenchymal damage or blood dyscrasia, nor in those with a history of sulfonamide sensitivity.

(7) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This regulation shall become effective January 27, 1976.

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

Dated: January 19, 1976.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.76-2264 Filed 1-26-76;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PART 4—PROCEDURE GOVERNING APPLICATIONS FOR CERTIFICATES OF EXEMPTION

On July 21, 1975, there was published in the FEDERAL REGISTER (40 FR 30489) a notice of proposed rule making and proposed regulations with specified changes from those published at 24 FR 8493 (Oct. 21, 1959). As a result of comments received, the following changes are made in the text as published on July 21, 1975:

Section 4.4(11). The text following the word "preceding" in line 7 shall read "five calendar years plus income to date of application".

Section 4.14. The text between the word "thereof" in line 6 and "may" in line 7 shall read "The applicant, the Secretary and others to whom notice has been sent pursuant to Sec. 4.7".

Section 4.15. The text preceding the word "shall" in line 1 shall read "The applicant, the Secretary and others to whom notice has been sent pursuant to § 4.7".

All comments were given due consideration prior to effecting the above changes.

Sec.
4.1 Definitions.
4.2 Who may apply for Certificate of Exemption.
4.3 Contents of application.
4.4 Supporting affidavit; additional information.
4.5 Character endorsements.
4.6 Institution of proceedings.
4.7 Notice of hearing; postponements.
4.8 Hearing.
4.9 Representation.
4.10 Waiver of oral hearing.
4.11 Appearance; testimony; cross-examination.
4.12 Evidence which may be excluded.
4.13 Record for decision. Receipt of documents comprising record-timing and extension.
4.14 Examiner's recommended decision; exceptions thereto; oral arguments before Board.
4.15 Certificate of Exemption.
4.16 Rejection of application.
4.17 Availability of decisions.

AUTHORITY: Secs. 504, 606, 73 Stat. 536, 540; (29 U.S.C. 504, 526).

CROSS REFERENCE: For Organization Statement, Board of Parole, see Subpart V of Part 0 of this chapter.

§ 4.1 Definitions.

As used in this part:

(a) "Act" means the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519).

(b) "Board" means the United States Board of Parole.

(c) "Secretary" means the Secretary of Labor or his designee.

(d) "Employer" means the labor organization, or person engaged in an industry or activity affecting commerce, or group or association of employers dealing with any labor organization, which an applicant under § 4.2 desires to serve in a capacity for which he is ineligible under section 504(a) of the Act.

§ 4.2 Who may apply for Certificate of Exemption.

Any person who has been convicted of any of the crimes enumerated in section 504(a) of the Act whose service, present or prospective, as described in that section is or would be prohibited by that section because of such a conviction or a prison term resulting therefrom may apply to the Board for a Certificate of Exemption from such prohibition.

§ 4.3 Contents of application.

A person applying for a Certificate of Exemption shall file with the Office of General Counsel, U.S. Board of Parole, 320 First Street, NW., Washington, D.C. 20537, a signed application under oath, in ten copies, which shall set forth clearly and completely the following information:

(a) The name and address of the applicant and any other names used by the applicant and dates of such use.

(b) A statement of all convictions and imprisonments which prohibit the applicant's service under the provisions of section 504(a) of the Act.

(c) Whether any citizenship rights were revoked as a result of conviction or imprisonment and if so the name of the court and date of judgment thereof and the extent to which such rights have been restored.

(d) The name and location of the employer and a description of the office or paid position, including the duties thereof, for which a Certificate of Exemption is sought.

(e) A full explanation of the reasons or grounds relied upon to establish that the applicant's service in the office or employment for which a Certificate of Exemption is sought would not be contrary to the purposes of the Act.

(f) A statement that the applicant does not, for the purpose of the proceeding, contest the validity of any conviction.

§ 4.4 Supporting affidavit; additional information.

(a) Each application filed with the Board must be accompanied by a signed affidavit, in 10 copies, setting forth the following concerning the personal history of the applicant:

(1) Place and date of birth. If the applicant was not born in the United States, the time of first entry and port of entry, whether he is a citizen of the United States, and if naturalized, when, where and how he became naturalized and the number of his Certificate of Naturalization.

(2) Extent of education, including names of schools attended.

(3) History of marital and family status, including a statement as to whether any relatives by blood or marriage are currently serving in any capacity with any labor organization, group or association of employers dealing with labor organizations or industrial labor relations group, or currently advising or representing any employer with respect to employee organizing, concerted activities, or collective bargaining activities.

(4) Present employment, including office or offices held, with a description of the duties thereof.

(5) History of employment, including military service, in chronological order.

(6) Licenses held, at the present time or at any time in the past five years, to possess or carry firearms.

(7) Veterans' Administration claim number and regional office handling claim, if any.

(8) A listing (not including traffic offenses for which a fine of not more than $25 was imposed or collateral of more than $25 was forfeited) by date and place of all arrests, convictions for felonies, misdemeanors, or offenses and all imprisonment or jail terms resulting therefrom, together with a statement of the circumstances of each violation which led to arrest or conviction.

(9) Whether applicant was ever on probation or parole, and if so the names of the courts by which convicted and the dates of conviction.

(10) Names and locations of all labor organizations or employer groups with which the applicant has ever been associated or employed, and all employers whom he has advised or represented concerning employee organizing, concerted activities, or collective bargaining activities, together with a description of the duties performed in each such employment or association.

(11) A statement of applicant's net worth, including all assets held by him or in the names of others for him, the amount of each liability owed by him or by him together with any other person, and the amount and source of all income during the immediately preceding five calendar years plus income to date of application.

(12) Any other information which the applicant feels will assist the Board in making its determination.

(b) The Board may require of the applicant such additional information as it deems appropriate for the proper consideration and disposition of his application.

§ 4.5 Character endorsements.

Each application filed with the Board must be accompanied by letters or other forms of statement (in three copies) from six persons addressed to the Chairman, U.S. Board of Parole, attesting to the character and reputation of the applicant. The statement as to character shall indicate the length of time the writer has known applicant, and shall describe applicant's character traits as they relate to the position for which the exemption is sought and the duties and responsibilities thereof. The statement as to reputation shall attest to applicant's reputation in his community or in his circle of business or social acquaintances. Each letter or other form of statement shall indicate that it has been submitted in compliance with procedures under section 504(a) of the Act and that applicant has informed the writer of the factual basis of his application. The persons submitting letters or other forms of statement shall not include relatives by blood or marriage, prospective employers, or persons serving in any official capacity with any labor organization, group or association of employers dealing with labor organizations or industrial labor relations group.

§ 4.6 Institution of proceedings.

All applications and supporting documents received by the Board shall be reviewed for completeness by the Office of General Counsel of the Board, and if complete and fully in compliance with the regulations of this part the Office of General Counsel shall accept them for filing. Applicant and/or his representative will be notified by the Office of General Counsel of any deficiency in the application and supporting documents. The amount of time allowed for deficiencies to be remedied will be specified in said notice. In the event such deficiencies are not remedied within the specified period or any extension thereof granted after application to the Board in writing within the specified period, the application shall be deemed to have been withdrawn, and notice thereof shall be given to applicant.

§ 4.7 Notice of hearing; postponements.

Upon the filing of an application, the Board shall: (a) Set the application for hearing on a date within a reasonable time after its filing and notify by certified mail the applicant of such date; (b) give notice, as required by section 504(a) of the Act, to the appropriate State, County, or Federal prosecuting officials in the jurisdiction or jurisdictions in which the applicant was convicted that an application for a Certificate of Exemption has been filed and the date for hearing thereon; and (c) notify the Secretary that an application has been filed and the date for hearing thereon and furnish him copies of the application and all supporting documents. Any party may request a postponement of a hearing date in writing from the Office of General Counsel at any time prior to ten (10) days before the scheduled hearing date. No request for postponement other than the first for any party will be considered unless a showing is made of cause entirely beyond the control of the requester. The granting of such requests will be within the discretion of the Board. In the event of a failure to appear on the hearing date as originally scheduled or extended, the absent party will be deemed to have waived his right to a hearing. The hearing will be conducted with the parties present participating and documentation, if any, of the absent party entered into the record.

§ 4.8 Hearing.

The hearing on the application shall be held at the offices of the Board in Washington, D.C., or elsewhere as the Board may direct. The hearing shall be held before the Board, before one or more Members of the Board, or before one or more examiners appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105) as the Board by order shall determine. Hearings shall be conducted in accordance with sections 7 and 8 of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 4.9 Representation.

The applicant may be represented before the Board by any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State or territory of the United States, or the District of Columbia, and who is not under any order of any court suspending, enjoining, restraining, or disbarring him from, or otherwise restricting him in, the practice of law. Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Board, his personal appearance or signature shall constitute a representation to the Board that under the provisions of this part and applicable law he is authorized and qualified to represent the particular person in whose

behalf he acts. Further proof of a person's authority to act in a representative capacity may be required. When any applicant is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such applicant shall be given to or by such attorney. If an applicant is represented by more than one attorney, service by or upon any one of such attorneys shall be sufficient.

§ 4.10 Waiver of oral hearing.

The Board, upon receipt of a statement from the Secretary that he does not object, and in the absence of any request for oral hearing from the others to whom notice has been sent pursuant to § 4.7 may grant an application without receiving oral testimony with respect to it.

§ 4.11 Appearance; testimony; cross-examination.

(a) The applicant shall appear and, except as otherwise provided in § 4.10, shall testify at the hearing and may cross-examine witnesses.

(b) The Secretary and others to whom notice has been sent pursuant to § 4.7 shall be afforded an opportunity to appear and present evidence and cross-examine witnesses, at any hearing.

(c) In the discretion of the Board or presiding officer, other witnesses may testify at the hearing.

§ 4.12 Evidence which may be excluded.

The Board or officer presiding at the hearing may exclude irrelevant, untimely, immaterial, or unduly repetitious evidence.

§ 4.13 Record for decision. Receipt of documents comprising record-timing and extension.

(a) The application and all supporting documents, the transcript of the testimony and oral argument at the hearing, together with any exhibits received and other documents filed pursuant to these procedures and/or the Administrative Procedures Act shall be made parts of the record for decision.

(b) At the conclusion of the hearing the presiding officer shall specify the time for submission of proposed findings of fact and conclusions of law (unless waived by the parties); transcript of the hearing, and supplemental exhibits, if any. He shall set a tentative date for the recommended decision based upon the timing of these preliminary steps. Extensions of time may be requested by any party, in writing, from the Board of Parole. Failure of any party to comply with the time frame as established or extended will be deemed to be a waiver on his part of his right to submit the document in question. The adjudication will proceed with the absence of said document and reasons therefore noted in the record.

§ 4.14 Examiner's recommended decision; exceptions thereto; oral argument before Board.

Whenever the hearing is conducted by an examiner, at the conclusion of the hearing he shall submit a recommended decision to the Board, which shall include a statement of findings and conclusions, as well as the reasons thereof. The applicant, the Secretary and others to whom notice has been sent pursuant to § 4.7 may file with the Board, within 10 days after having been furnished a copy of the recommended decision, exceptions thereto and reasons in support thereof. The Board may order the taking of additional evidence and may request the applicant and others to appear before it. The Board may invite oral argument before it on such questions as it desires.

§ 4.15 Certificate of Exemption.

The applicant, the Secretary and others to whom notice has been sent pursuant to § 4.7 shall be served a copy of the Board's decision and order with respect to each application. Whenever the Board's decision is that the application be granted, the Board shall issue a Certificate of Exemption to the applicant. The Certificate of Exemption shall extend only to the stated employment with the prospective employer named in the application.

§ 4.16 Rejection of application.

No application for a Certificate of Exemption shall be accepted from any person whose application for a Certificate of Exemption has been withdrawn, deemed withdrawn due to failure to remedy deficiencies in a timely manner, or denied by the Board within the preceding 12 months.

§ 4.17 Availability of decisions.

The Board Decisions under section 504 (a) of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519) and those which will be forthcoming under section 411 of the Employees Retirement Income Security Act are and will be available for examination in the Office of the U.S. Board of Parole, 320 First Street, NW., Washington, D.C. 20537. Copies will be mailed upon written request to the Office of General Counsel, U.S. Board of Parole at the above address at a cost of ten cents per page.

Dated: January 21, 1976.

MAURICE H. SIGLER,
Chairman, U.S. Board of Parole.

[FR Doc.76-2324 Filed 1-26-76;8:45 am]

PART 4a—PROCEDURE GOVERNING APPLICATIONS FOR CERTIFICATES OF EXEMPTION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

On July 21, 1975, there was published in the FEDERAL REGISTER (40 FR 30491) a notice of proposed rule making and proposed regulations with specified changes in the Emergency Regulations governing said applications as published at 40 FR 3210K (Jan. 20, 1957). As a result of comments received, the following changes are made in the text as published on July 21, 1975:

Section 4a.4(11). The text following the word "preceding" in line 7 shall read "five calendar years plus income to the date of application".

Section 4a.14. The test between the word "therefor" in line 6 and "may" in line 7 shall read "The applicant, the Secretary and others to whom notice has been sent pursuant to Sec. 4a.7".

Section 4a.15. The text preceding the word "shall" in line 1 shall read "The applicant, the Secretary and others to whom notice has been sent pursuant to § 4a.7".

All comments were given due consideration prior to effecting the above changes.

Sec.

4a.1 Definitions.
4a.2 Who may apply for Certificate of Exemption.
4a.3 Contents of application.
4a.4 Supporting affidavits; additional information.
4a.5 Character endorsements.
4a.6 Institution of proceedings.
4a.7 Notice of hearing; postponements.
4a.8 Hearing.
4a.9 Representation.
4a.10 Waiver of oral hearing.
4a.11. Appearance; testimony; cross-examination.
4a.12 Evidence which may be excluded.
4a.13 Record for decision. Receipt of documents comprising record-timing and extensions.
4a.14 Examiner's recommended decision; exceptions thereto; oral argument before Board.
4a.15 Certificate of Exemption.
4a.16 Rejection of application.
4a.17 Availability of Decisions.

AUTHORITY: Secs. 411, 507a, 88 Stat. 887, 894; 29 U.S.C. 1111, 1137.

CROSS REFERENCE: For Organization Statement, Board of Parole, see Subpart V of Part O of this chapter.

§ 4a.1 Definitions.

As used in this part:

(a) "Act" means the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406) (88 Stat. 829).

(b) "Board" means the United States Board of Parole.

(c) "Secretary" means the Secretary of Labor or his designee.

(d) "Employer" means the employee benefit plan with which an applicant under § 4a.2 desires to serve in a capacity for which he is ineligible under section 411(a) of the Act.

(e) All other terms used in this part shall have the same meaning as identical or comparable terms when those terms are used in the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406) (88 Stat. 829).

§ 4a.2 Who may apply for certificate of exemption.

Any person who has been convicted of any of the crimes enumerated in section 411(a) of the Act whose service, present or prospective, as described in that section is or would be prohibited by that section because of such a conviction or a prison term resulting therefrom may apply to the Board for a Certificate of Exemption from such a prohibition.

§ 4a.3 Contents of application.

A person applying for a Certificate of Exemption shall file with the Office of General Counsel, U.S. Board of Parole, 320 First Street, NW., Washington, D.C.

20537, a signed application under oath, in 10 copies, which shall set forth clearly and completely the following information:

(a) The name and address of the applicant and any other names used by the applicant and dates of such use.

(b) A statement of all convictions and imprisonments which prohibit the applicant's service under the provisions of section 411(a) of the Act.

(c) Whether any citizenship rights were revoked as a result of conviction or imprisonment and if so the name of the court and date of judgment thereof and the extent to which such rights have been restored.

(d) The name and location of the employer and a description of the office or paid position, including the duties thereof, for which a Certificate of Exemption is sought.

(e) A full explanation of the reasons or grounds relied upon to establish that the applicant's service in the office or employment for which a Certificate of Exemption is sought would not be contrary to the purposes of the Act.

(f) A statement that the applicant does not, for the purpose of the proceeding, contest the validity of any conviction.

§ 4a.4 Supporting affidavit; additional information.

(a) Each application filed with the Board must be accompanied by a signed affidavit, in 10 copies, setting forth the following concerning the personal history of the applicant:

(1) Place and date of birth: If the applicant was not born in the United States, the time of first entry and port of entry, whether he is a citizen of the United States, and if naturalized, when, where and how he became naturalized and the number of his Certificate of Naturalization.

(2) Extent of education, including names of schools attended.

(3) History of marital and family status, including a statement as to whether any relatives by blood or marriage are currently serving in any capacity with any employee benefit plan or with any labor organization, group or association of employers dealing with labor organizations or industrial labor relations group, or currently advising or representing any employer with respect to employee organizing concerted activities, or collective bargaining activities.

(4) Present employment, including office or offices held, with a description of the duties thereof.

(5) History of employment, including military service, in chronological order.

(6) Licenses held, at the present time or at any time in the past five years, to possess or carry firearms.

(7) Veterans' Administration claim number and regional office handling claim, if any.

(8) A listing (not including traffic offenses for which a fine of not more than $25 was imposed or collateral of not more than $25 was forfeited) by date and place of all arrests, convictions for felonies, misdemeanors, or offenses and all imprisonment or jail terms resulting therefrom, together with a statement of the circumstances of each violation which led to arrest or conviction.

(9) Whether applicant was ever on probation or parole, and if so the names of the courts by which convicted and the dates of conviction.

(10) Names and locations of all employee benefit plans and all labor organizations or employer groups with which the applicant has ever been associated or employed and all employers or employee benefit plans which he has advised or represented concerning employee organizing concerted activities, or collective bargaining activities, together with a description of the duties performed in each such employment or association.

(11) A statement of applicant's net worth, including all assets held by him or in the names of others for him, the amount of each liability owed by him or by him together with any other person, and the amount and source of all income during the immediately preceding five calendar years plus income to date of application.

(12) Any other information which the applicant feels will assist the Board in making its determination.

(b) The Board may require of the applicant such additional information as it deems appropriate for the proper consideration and disposition of his application.

§ 4a.5 Character endorsements.

Each application filed with the Board must be accompanied by letters or other forms of statement (in three copies) from six persons addressed to the Chairman, U.S. Board of Parole, attesting to the character and reputation of the applicant. The statement as to character shall indicate the length of time the writer has known applicant, and shall describe applicant's character traits as they relate to the position for which the exemption is sought and the duties and responsibilities thereof. The statement as to reputation shall attest to applicant's reputation in his community or in his circle of business or social acquaintances. Each letter or other form of statement shall indicate that it has been submitted in compliance with procedures under Section 411 of the Act and that applicant has informed the writer of the factual basis of his application. The persons submitting letters or other forms of statement shall not include relatives by blood or marriage, prospective employers, or persons serving in any official capacity with any employee benefit plan, labor organization group or association of employers dealing with labor organizations or industrial labor relations group.

§ 4a.6 Institution of proceedings.

All applications and supporting documents received by the Board shall be reviewed for completeness by the Office of General Counsel of the Board and if complete and fully in compliance with the regulations of this part the Office of General Counsel shall accept them for filing. Applicant and/or his representative will be notified by the Office of General Counsel of any deficiency in the application and supporting documents. The amount of time allowed for deficiencies to be remedied will be specified in said notice. In the event such deficiencies are not remedied within the specified period or any extension thereof granted after application to the Board in writing within the specified period, the application shall be deemed to have been withdrawn, and notice thereof shall be given to applicant.

§ 4a.7 Notice of hearing; postponements.

Upon the filing of an application, the Board shall: (a) Set the application for hearing on a date within a reasonable time after its filing and notify by certified mail the applicant of such date;

(b) Give notice, as required by section 411(a) of the Act, to the appropriate State, County, or Federal prosecuting officials in the jurisdiction or jurisdictions in which the applicant was convicted that an application for a Certificate of Exemption has been filed and the date for hearing thereon; and

(c) Notify the Secretary that an application has been filed and the date for hearing thereon and furnish him copies of the application and all supporting documents.

Any party may request a postponement of a hearing date in writing from the Office of General Counsel at any time prior to ten (10) days before the scheduled hearing date. No request for postponement other than the first for any party will be considered unless a showing is made of cause entirely beyond the control of the requestor. The granting of such requests will be within the discretion of the Board. In the event of a failure to appear on the hearing date as originally scheduled, or extended, the absent party will be deemed to have waived his right to a hearing. The hearing will be conducted with the parties present participating and documentation, if any, of the absent party entered into the record.

§ 4a.8 Hearing.

The hearing on the application shall be held at the offices of the Board in Washington, D.C., or elsewhere as the Board may direct. The hearing shall be held before the Board, before one or more members of the Board, or before one or more examiners appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105) as the Board by order shall determine. Hearings shall be conducted in accordance with sections 7 and 8 of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 4a.9 Representation.

The applicant may be represented before the Board by any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State or

territory of the United States, or the District of Columbia, and who is not under any order of any court suspending, enjoining, restraining, or disbarring him from, or otherwise restricting him in, the practice of law. Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Board, his personal appearance or signature shall constitute a representation to the Board that under the provisions of this part and applicable law he is authorized and qualified to represent the particular person in whose behalf he acts. Further proof of a person's authority to act in a representative capacity may be required. When any applicant is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such applicant shall be given to or by such attorney. If an applicant is represented by more than one attorney, service by or upon any one of such attorneys shall be sufficient.

§ 4a.10 Waiver of oral hearing.

The Board, upon receipt of a statement from the Secretary that he does not object, and in the absence of any request for oral hearing from the others to whom notice has been sent pursuant to § 4a.7 may grant an application without receiving oral testimony with respect to it.

§ 4a.11 Appearance; testimony; cross-examination.

(a) The applicant shall appear and, except as otherwise provided in § 4a.10 shall testify at the hearing and may cross-examine witnesses.

(b) The Secretary and others to whom notice has been sent pursuant to § 4a.7 shall be afforded an opportunity to appear and present evidence and cross-examine witnesses, at any hearing.

(c) In the discretion of the Board or presiding officer, other witnesses may testify at the hearing.

§ 4a.12 Evidence which may be excluded.

The Board or officer presiding at the hearing may exclude irrelevant, untimely, immaterial, or unduly repetitious evidence.

§ 4a.13 Record for decision. Receipt of documents comprising record-timing and extensions.

(a) The application and all supporting documents, the transcript of the testimony and oral argument at the hearing, together with any exhibits received, and other documents filed pursuant to these procedures and/or the Administrative Procedures Act, shall be made parts of the record for decision.

(b) At the conclusion of the hearing the presiding officer shall specify the time for submission of proposed findings of fact and conclusions of law (unless waived by the parties); transcript of the hearing, and supplemental exhibits, if any. He shall set a tentative date for the recommended decision based upon the timing of these preliminary steps. Extensions of time may be requested by any party, in writing, from the Board of Parole. Failure of any party to comply with the time frame as established or extended will be deemed to be a waiver on his part of his right to submit the document in question. The adjudication will proceed with the absence of said document and reasons therefor noted in the record.

§ 4a.14 Examiner's recommended decision; exceptions thereto; oral argument before Board.

Whenever the hearing is conducted by an examiner, at the conclusion of the hearing he shall submit a recommended decision to the Board, which shall include a statement of findings and conclusions, as well as the reasons therefor. The applicant, the Secretary and others to whom notice has been sent pursuant to § 4a.7 may file with the Board, within 10 days after having been furnished a copy of the recommended decision, exceptions thereto and reasons in support thereof. The Board may order the taking of additional evidence and may request the applicant and others to appear before it. The Board may invite oral argument before it on such questions as it desires.

§ 4a.15 Certificate of exemption.

The applicant, and others to whom notice has been sent pursuant to § 4a.7 shall be served a copy of the Board's decision and order with respect to each application. Whenever the Board's decision is that the application be granted, the Board shall issue a Certificate of Exemption to the applicant. The Certificate of Exemption shall extend only to the stated employment with the prospective employer named in the application.

§ 4a.16 Rejection of application.

No application for a Certificate of Exemption shall be accepted from any person whose application for a Certificate of Exemption has been withdrawn, deemed withdrawn due to failure to remedy deficiencies in a timely manner, or denied by the Board, within the preceding 12 months.

§ 4a.17 Availability of decisions.

Section 411 of the Employees Retirement Income Security Act is similar to section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519). The procedure governing Applications for Certificates of Exemption is similar as to both sections. The Board decisions under section 504(a) and those which will be forthcoming under section 411 are and will be available for examination in the Office of the U.S. Board of Parole, 320 First Street, NW., Washington, D.C. 20537. Copies will be mailed upon written request to the Office of General Counsel, U.S. Board of Parole, at the above address at a cost of ten cents per page.

Dated: January 21, 1976.

MAURICE H. SIGLER,
Chairman, U.S. Board of Parole.

[FR Doc.76-2325 Filed 1-26-76;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 75-181]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Harlem River, East River, and Gowanus Canal, N.Y.

Correction

In FR Doc. 76-1414 appearing in the issue of Friday, January 16, 1976 on page 2385 the effective date was incorrectly given. The effective date should have read "February 20, 1976".

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 1—GENERAL PROVISIONS

Safeguarding Personal Information in Veterans Administration Records

On page 53598 of the FEDERAL REGISTER of November 19, 1975, there was published a notice of proposed regulatory development to amend § 1.579, which contains the requirements for access to personal information from Veterans Administration records. This amendment specifies the officials responsible in their immediate Central Office or field facility areas of jurisdiction for those particular actions and determinations required to accommodate amendment of record requests submitted in accordance with the provisions of the Privacy Act and implementing Veterans Administration regulations and procedures.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulation.

No written comments have been received and the proposed regulation is hereby adopted without change and is set forth below.

Effective date. This VA Regulation is effective September 27, 1975.

Approved: January 21, 1976.

By direction of the Administrator.

[SEAL] ODELL W. VAUGHN,
Deputy Administrator.

In § 1.579, paragraph (d) is revised to read as follows:

§ 1.579 Access to personal information from Veterans Administration records.

* * * * *

(d) The department or staff office having jurisdiction over the records involved will also establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Veterans Administration of an initial adverse Veterans Administration determination, and for whatever additional means may be necessary for each individual to be able

to exercise fully his or her rights under 5 U.S.C. 552a.

(1) The following headquarters officials are designated as responsible for the amendment of records or information located in Central Office and under their jurisdiction, as appropriate: Administrator; Deputy Administrator; Chairman, Contract Appeals Board; Associate Deputy Administrator; Assistant Deputy Administrator; Chairman, Board of Veterans Appeals; General Counsel; Manager, Administrative Services; Controller; Assistant Administrator for Personnel; Director, Information Service; Assistant Administrator for Planning and Evaluation; Assistant Administrator for Construction; Director, Contract Compliance Service; Chief Medical Director; Chief Benefits Director; Chief Data Management Director; and the Director, National Cemetery System. These officials will determine and advise the requester of the identifying information required to relate the request to the appropriate record, evaluate and grant or deny requests to amend, review initial adverse determinations upon request, and assist requesters desiring to amend or appeal initial adverse determinations or learn further of the provisions for judicial review.

(2) The following field officials are designated as responsible for the amendment of records or information located in facilities under their jurisdiction, as appropriate: The Director of each Center, Domiciliary, Hospital, Outpatient Clinic, Regional Office, Supply Depot; and District Counsels. These officials will function in the same manner at field facilities as that specified in paragraph (d)(1) of this section for headquarters officials in Central Office.

* * * * *

[FR Doc.76-2331 Filed 1-26-76;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Amdt. E-177]

PART 101-27—INVENTORY MANAGEMENT

Changes in Regulations Covering Management of Government-Owned Inventories of Personal Property

This regulation provides updated policies, principles, and guidelines to be used in the management of Government-owned inventories of personal property. The table of contents for Part 101-27 is amended to reserve the following entries:

Sec.
101-27.301 [Reserved]
101-27.401 [Reserved]

Subpart 101-27.1—Stock Replenishment

1. Section 101-27.102 is revised to read as follows:

§ 101-27.102 Economic order quantity principle.

The economic order quantity (EOQ) principle is a means for achieving economical inventory management. Application of the EOQ principle reduces total variable costs of procurement and possession to a minimum.

2. Section 101-27.102-2 is revised to read as follows:

§ 101-27.102-2 Guidelines.

Guidelines for implementing the EOQ principle of stock replenishment are in the GSA Handbook, The Economic Order Quantity Principle and Applications, issued by the Federal Supply Service, GSA. The handbook is identified under national stock number 7610-00-543-6765 in the GSA Supply Catalog, and copies may be obtained by agencies in the same manner as other items in that catalog. The public may purchase the handbook from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

3. Sections 101-27.102-3(a) and (b) are revised to read as follows:

§ 101-27.102-3 Limitations on use.

(a) When there are no limiting factors which preclude its application, such as space or budgetary limitations, the basic EOQ techniques shall be used.

(b) When a space, personnel, or budgetary limitation precludes application of the basic EOQ technique, a modification of the technique may be made provided the modification produces:

(1) The fewest possible replenishments for a given level of inventory investment; or

(2) The lowest possible level of inventory investment for a given number of replenishments.

* * * * *

4. Section 101-27.103 is amended as follows:

§ 101-27.103 Acquisition of excess property.

Except for inventories eligible for return to GSA for credit pursuant to the provisions of § 101-27.501 and for inventories for which an economic retention limit has been established in accordance with the provisions of Subpart 101-27.3, inventory levels may be adjusted upward when items of stock are to be acquired from excess sources. Such adjustments should be tempered by caution and arrived at after careful consideration. Generally, acquisitions of items for inventory from excess sources shall not exceed a 2-year supply except when:

* * * * *

Subpart 101-27.3—Maximizing Use of Inventories

1. Section 101-27.301 is deleted and reserved as follows:

§ 101-27.301 [Reserved]

2. Section 101-27.303 is revised to read as follows:

§ 101-27.303 Reducing long supply.

Through effective interagency matching of material and requirements before the material becomes excess, unnecessary procurements and investment losses can be reduced. Timely action is required to reduce inventories to their normal stock levels by curtailing procurement and by utilizing and redistributing long supply. (The term "long supply" means the increment of inventory of an item that exceeds the stock level criteria established for that item by the inventory manager, but excludes quantities to be declared excess.) In this connection, requirements for agency managed items should be obtained from long supply inventories offered by agencies rather than by procurement from commercial sources. Because supply requirements usually fluctuate over a period of time, a long supply quantity which is 10 percent or less of the total stock of the item is considered marginal and need not be reduced.

3. Section 101-27.303-2 is amended as follows:

§ 101-27.303-2 Redistribution.

If the long supply of an item remains greater than 10 percent of the total stock of an item despite efforts to cancel or transfer the long supply as provided in § 101-27.303-1, the inventory manager shall offer the long supply to another agency or other agencies in accordance with this § 101-27.303-2. Before offering a long supply to any agency, the inventory manager shall determine whether the item to be offered is a centrally managed item or an agency managed item. A centrally managed item is an item of supply or equipment which forms part of an inventory of an agency performing a mission of storage and distribution to other Government activities; e.g., GSA and DSA. An agency managed item is a procured item that forms a part of a controlled inventory of an agency and its activities for issue internally for its own use. After determining whether the item to be offered is an agency or centrally managed item, the inventory manager shall:

* * * * *

(b) Offer agency managed items to other agencies which manage the same item. Reimbursement shall be arranged by the agencies effecting the inventory transfer. The responsibility of locating agencies or activities requiring these items shall rest with the agency holding the long supply. However, agencies may receive a list of Government activities using particular national stock numbers by writing to the General Services Administration (FFL), Washington, DC 20406.

4. Section 101-27.304 is revised to read as follows:

§ 101-27.304 Criteria for economic retention limits.

If a long supply continues to exceed 10 percent of the total stock of an item despite efforts to redistribute the long supply as provided in § 101-27.303-2, the inventory manager shall establish an economic retention limit for the item in accordance with the provisions of this § 101-27.304. An economic retention limit is the maximum quantity of an item that can be held in stock without incurring greater costs for carrying the stock

than the costs for disposal and resulting loss of investment. The economic retention limit shall be used to determine which portion of the inventory may be economically retained and which portion should be disposed of as excess.

Subpart 101–27.4—Elimination of Items From Inventory

§ 101–27.401 [Reserved]

1. Section 101–27.401 is deleted and reserved as follows:

2. Section 101–27.403 is revised to read as follows:

§ 101–27.403 General.

By eliminating inactive items and slow-moving items which are readily available, when needed, from Government wholesale supply activities or from commercial sources, the costs to the Government in inventory investment and for maintaining the items in inventory can be eliminated. An "inactive item" is an item for which no current or future requirements are recognized by previous users and the item manager. A "slow-moving item" is an item for which there are current or future requirements, but the frequency and quantity of such requirements do not make it economical to stock them in lieu of obtaining requirements from other sources when needed. However, "standby or reserve items" are not to be eliminated from inventories. A "standby or reserve item" is an item for which a reserve stock is held so that the items will be available immediately to meet emergencies for which there is insufficient time to procure or requisition the items without endangering life or causing substantial financial loss to the Government.

Subpart 101–27.5—Return of GSA Stock Items

Sections 101–27.503, 101–27.504, and 101–27.505 are revised to read as follows:

§ 101–27.503 Allowable credit.

Allowable credit for activities returning material that is accepted by GSA will be reflected in billings by GSA.

§ 101–27.504 Notice to GSA.

When an activity elects to offer material to GSA for credit, the activity shall report offers to the Inventory Management Division. The mailing address is General Services Administration (FPIO), Washington, D.C. 20406. Offers may be transmitted by transceiver using the routing identifier, GG0. Offers shall be submitted in accordance with FED STRIP/MILSTRIP.

§ 101–27.505 Notice to activity.

GSA will provide notice to the offering activity of an acceptance/rejection decision for an offer and verification of material receipt for accepted offers.

(a) Within 20 workdays after receipt of an offer to return material, GSA will notify the offering activity of acceptance or rejection of the offer.

(1) For accepted offers, GSA will inform the offering activity of the GSA supply distribution facility to which the material shall be shipped. Prior to shipment of the material authorized by GSA for return, activities shall verify the declared condition. (If the offering activity considers that the transportation costs of sending the material to the GSA supply distribution facility are excessive in relation to the value of the material and withdraws the offer, the GSA region that was designated to receive the offered material shall be notified accordingly.)

(2) For rejected offers, GSA will so inform the activity offering the material and give the reason for nonacceptance.

(b) Upon receipt of material authorized for return by GSA, the offering activity will be provided verification of receipt and notice of any item discrepancy. A notice of credit will be provided the offering activity through credit entries on the monthly billing statement from the supporting GSA finance center.

(c) When offers of material that have been authorized by GSA for return are withdrawn, offering activities shall report such cancellation to the GSA region that was designated to receive the offered material.

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

Effective date. This regulation is effective on January 27, 1976.

Dated: January 16, 1976.

T. M. CHAMBERS,
Acting Administrator of General Services.

[FR Doc.76–2335 Filed 1–26–76;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

Joint Bidding on Oil and Gas Leases

The FEDERAL REGISTER of October 1, 1975, (FR Vol. 40, No. 191, Doc. 75–26212) published notice of an amendment to 43 CFR 3300 which placed certain limitations on joint bidding for Outer Continental Shelf (OCS) oil and gas leases. It required, at § 3302.3–2(a) that any person wishing to bid jointly at any OCS lease sale held between November 1, 1975, and April 30, 1976, must have filed with the Director of the Bureau of Land Management by October 20, 1975, a sworn Statement of Production which stated whether that person was chargeable with an average daily production in excess of 1.6 million barrels of crude oil, natural gas or liquified petroleum products during the prior production period of January 1, 1975, through June 30, 1975.

By amendment published in the FEDERAL REGISTER of November 13, 1975, that date for filing such Statement in order to qualify for bidding jointly during this first Bidding Period was extended to December 8, 1975.

§ 3302.3–2 [Amended]

Section 3302.3–2(a) of the regulation is hereby further amended as follows:

Strike the words "* * * except that for the initial bidding period commencing November 1, 1975, all Statements of Production should be filed no later than December 8, 1975," and substitute therefore "* * * except that for the initial bidding period commencing November 1, 1975, all Statements of Production should be filed no later than February 9, 1976."

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

JANUARY 22, 1976.

[FR Doc.76–2388 Filed 1–26–76;8:45 am]

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5568]

[Idaho 016388]

IDAHO

Withdrawal for Dworshak Dam and Reservoir Project

Correction

In FR Doc. 76–1573, appearing on page 2823 in the issue for Tuesday, January 20, 1976, make the following changes:

1. On page 2823, second column, under "T. 38 N., R. 3 E.,", Sec. 22, should read as follows: "Sec. 22, Lots 6, 7, 8, 9, E½NW¼, E½SW¼NW¼, E½NW¼SW¼, SW¼NW¼SW¼;".

2. Under "T. 39 N., R. 4 E.,", Sec. 31, should read as follows:

"Sec. 31, SE¼ of Lot 10, E½W½NE¼, NW¼NW¼NE¼, S½SE¼SW¼, W½SE¼;".

3. Under "T. 41 N., R. 4 E.," Sec. 35 and 36 should read as follows:

"Sec. 35, NE¼, SE¼NE¼NW¼, E½SW¼NW¼, SE¼NW¼, NE¼SE¼SW¼, NE¼SE¼;."

"Sec. 36, W½SW¼NE¼, SW¼NE¼NW¼, NW¼NW¼NW¼, S½NW¼NW¼, S½NW¼, N½SW¼, W½SW¼SW¼, W½NW¼SE¼.".

Title 47—Telecommunications

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76–27]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Operation of Airborne Surface Detection Equipment

In the Matter of Amendment of Part 2 of the Commission's rules and regulations to amend footnote US 110 permitting operation of airborne surface detection equipment (ASDE) radar in the 15.7–16.2 GHz band on a primary basis.

1. The Office of Telecommunications Policy (OTP), has requested the Commission to amend its rules to recognize the operation of airborne surface detection equipment (ASDE) by the Federal Aviation Administration (FAA) in the 15.7–16.2 GHz band.

2. The FAA currently utilizes ASDE radar systems at several major U.S. airports. Operating in the 23.6–24.47 GHz band, this equipment is required to detect the presence of all aircraft and vehicles operating on the runways and taxiways, all aircraft at an altitude of 100 feet

and below, and individual aircraft and vehicles within 25 feet of each other at ground level. Unfortunately, this radar system becomes operationally unusable during moderate to heavy precipitation periods when its use is most urgently needed. However, recent studies indicate that the performance of ASDE systems could be raised to an acceptable level during such periods if they were operated in the lower frequency band 15.7–16.2 GHz which is less affected by precipitation than is the band 23.6–24.47 GHz. Accordingly, in its concern to improve public safety at airports, the FAA plans to move ASDE operations from the 23.6–24.47 GHz band to the 15.7–16.2 GHz band at some 35 major airports over the next 10 year period.

3. Under the present provisions of footnote US 110, non-Government radiolocation service is authorized on a secondary basis to Government radiolocation service in the 15.7–17.7 GHz band. The amendment proposed by the FAA would not alter the status of non-Government operations in the band, but would specifically recognize the presence of ASDE radar systems, as a cautionary notice to anyone planning to use the band for secondary non-Government purposes. Therefore, as we would not expect to receive any comments on this matter in a public rule making decision, issuance of prior notice and deferral of effective date provided under the Administrative Procedure Act, 5 U.S.C. 553, is unnecessary and contrary to the public interest.

4. *Accordingly, it is ordered*, That, effective January 28, 1976, § 2.106 of the rules is amended as set forth below. Authority for this action is contained in section 4(i) and 303 of the Communications Act of 1934, as amended.

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

Adopted: January 14, 1976.

Released: January 21, 1976.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] VINCENT J. MULLINS,
Secretary.

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

A. Part 2 is amended as follows:

1. In § 2.106, footnote US 110 is amended to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

US 110 In the frequency bands 3100–3300 MHz, 3500–3700 MHz, 5250–5350 MHz, 8500–9000 MHz, 9200–9300 MHz, 9500–10,000 MHz, 13.4–14.0 GHz, 15.7–17.7 GHz, 24.05–24.25 GHz and 33.4–36 GHz, the non-Government radiolocation service shall be secondary to the Government radiolocation service and to airborne doppler radars at 8800 MHz, and shall provide protection to airborne surface detection equipment (ASDE) operating between 15.7–16.2 GHz.

* * * * *

[FR Doc.76-2344 Filed 1-26-76;8:45 am]

[1] Commissioner Lee absent.

[Docket No. 20487; FCC 75-1409]

PART 76—CABLE TELEVISION SERVICES

Selection of Television Signals for Cable Television Carriage

Report and order—Proceeding terminated.

In the Matter of Amendment of Subpart D of Part 76 of the Commission's rules and regulations with respect to selection of television signals for Cable Television Carriage (leapfrog rules): §§ 76.59(b)(1) and (2), 76.61(b)(1) and (2) and 76.63.

INTRODUCTION

1. Contained in the Commission's rules are a number of restrictions on which television broadcast signals a cable television system may select in carrying distance signals. These are generally referred to as the cable television "leapfrogging" rules. The Commission issued its notice of proposed rulemaking in this proceeding because "our continuing review of our cable television rules generally as well as our specific experience with the operation of the existing leapfrogging rules, particularly insofar as problems have been brought to our attention through the work of our Re-Regulation Task Force, has led us to question whether the current rules achieve the practical objective we have desired."[1]

2. We have reviewed the comments submitted in response to the notice in this proceeding, undertaken our own review of the factual questions presented, and given extensive consideration to the basic policy questions involved. Based on this review, it is our judgment that the leapfrogging restrictions generally should be deleted from our rules and the decision as to which signals are selected for carriage left to the marketplace, the judgment of the cable system operator, and the desires of the cable system subscribers, consistent, of course with our other signal carriage rules. The one exception to this would be that we would continue to require that a certain priority be accorded to UHF television in those situations where a cable system in a major television market is authorized to carry three distant independent television signals. We do not believe the changes will adversely impact on the broadcast industry as a whole, individual broadcasters or broadcast service to the public. We do believe it will, in many instances, significantly reduce the cost of providing cable service and permit the selection of signals for carriage more attractive to cable subscribers than is permitted under the existing rules. It will at the same time significantly simplify an already unduly complex set of signal carriage rules and eliminate the administrative burdens which result from the need to consider *ad hoc* waivers of the existing rules when it is alleged that their application is inappropriate. The reasoning and factual premises on which we base this decision are set forth in greater detail below along with a summary of the comments filed.[2]

3. The arguments concerning whether the existing rules or rules of the same type should or should not be retained may be briefly summarized. Those opposed to the retention of the rules, in addition to denying that they serve any useful or valid purpose, argue that such restrictions:

Are irrational in their application, resulting in carriage patterns never contemplated when the rules were adopted and not promoting even the policies articulated as justifying such rules;

Impose heavy additional costs on cable systems and thus on their subscribers which are not counterbalanced by any benefit to cable subscribers or to the television viewing public generally.

4. Those commenting in support of the existing rules, and to some extent earlier Commission opinions on the subject,[3] suggest that the rules accomplish some or all of the following objectives:

Preventing the creation of "super stations";

Avoiding a potential media concentration problem;

Assuring carriage of stations with less audience appeal and thus limiting impact on local stations;

Promoting localism by assuring cable subscribers access to programming of state or regional interest and providing consistency with the allocations policy of Section 307(b) of the Communications Act;

Spreading the benefits of cable carriage to stations, including UHF, that might otherwise be passed over.

It is also suggested by some that the rules should not be changed because of their inclusion in the 1971 "consensus agreement"[4] and that the rules are necessary to avoid disturbing existing patterns of local and regional sports telecasting. Each of these above-described points will be considered in order.

5. In each section below a brief summary of the comments received from both broadcast and cable interests is set forth. Included with the cable interests are not only cable system owners and operators but the filings of several microwave common carriers, over whose facilities distant signals are delivered to cable systems, and those of a cable television equipment manufacturer. The only substantial non-industry comment was a joint filing by the National Black Media

[1] Notice of proposed rulemaking in Docket 20487, FCC 75-565, 53 FCC 2d 175 (1975), paragraph 4.

[2] In view of our total deletion of the leapfrogging rules, it is unnecessary for the ensuing discussion of issues and comments to treat the various alternative proposals herein—see, e.g., Paragraph 10 of the Notice, supra.

[3] The evolution of the existing rules is traced in paragraphs 2 and 3 of the Notice in this proceeding along with the reasons set forth by the Commission for adopting the existing rules.

[4] The existing rules, which were adopted in 1972, were preceded by an agreement among the principal parties concerned with the issue, as to what type of rules should be adopted. The contents of the agreement itself as well as some additional discussion of it are contained in the Cable Television Report and Order, FCC 72-108, 36 FCC 2d 143 (1972), Appendix D.

Coalition and the National Citizens Committee for Broadcasting which urged a deletion of the rules for reasons generally consistent with those comments of cable interests which are summarized below.

EXISTING RULES DO NOT ACHIEVE RATIONAL RESULTS

CABLE INTERESTS

6. Cable television interests have submitted extensive comments directed toward showing how the rules, due to geographical vagaries and the locations of particular markets, do not accomplish even their intended purpose. NCTA points out the waivers the Commission has granted to allow a cable television system to carry distant independent signals licensed to a city in the same state as the cable system rather than a closer out-of-state television station. "Commission on Cable Television of the State of New York," FCC 73-1148, 43 FCC 2d 826 (1973), recons. denied, FCC 74-49, 45 FCC 2d 283 (1974); *Madison County Cablevision*, FCC 73-934, 42 FCC 2d 969 (1974); "First Illinois Cable TV," FCC 74-125, 45 FCC 2d 304 (1974). The necessity of this type waiver to promote one of the objectives of the leapfrogging rule, i.e., obtaining programming of local interest to cable subscribers, is one example of the irrational carriage patterns which are said to develop from a strict application of the leapfrogging rules.

7. Other examples of such allegedly irrational patterns are also cited. Comments filed by Citizens Cable of Allen County, Inc., point to the "horrendous" results of a strict application of the leapfrogging rules in the Fort Wayne-Roanoke, Indiana television market. See, "Citizens Cable of Allen County, Inc.," FCC 75-240, 53 FCC 2d 1116. There, it is said, the cable television operator was forced to resort to three different television markets to obtain a second independent signal for five communities all surrounding and contiguous to the City of Fort Wayne. Moreover, Citizens Cable contends, this carriage was dictated by establishing artificial reference points in communities having no geographic boundaries by using the approximate centers of these communities' urbanized areas. Since this is an area of the country where one top-25 market rapidly displaces another as the closest such market, as these urbanized areas grow, the reference point will change and this may very well result in a change in signal carriage requirements.

8. Other commenting parties set forth further examples, similar to those mentioned in Paragraph 5 of the notice in this proceeding, to indicate how the rules may operate to preclude carriage of in-state signals, prohibit carriage of signals that more distant cable systems are permitted to carry, and force carriage of larger market stations when a smaller market station would have been preferred.

BROADCAST INTERESTS

9. In general, the comments to broadcast parties do not address this issue, although some, such as Kaiser Broadcasting Company, do suggest that these results are not particularly anomalous or arbitrary but simply a problem inherent in any similar type of rule involving a fixed cut-off point.

DISCUSSION

10. It is apparent that the rules in their present form sometimes have consequences which are inconsistent with the stated policies underlying the rules. The clearest such situation occurs when the rules operate to force carriage of the signal of a station from a different state or region when signals from within the state or region would otherwise have been preferred. New York State provides a good example of this contrary tendency in the rules. Cable systems in television markets in western upstate New York may select independent stations to carry from either Pittsburgh or Cleveland. Those in markets in the northeastern part of the state, absent a waiver of the rules, would have to select signals from Boston or Hartford. In neither area do the rules permit carriage of signals from New York City.[5] While the rules pertaining to carriage of network stations recognize the policy favoring carriage of in-state stations and allow them to be carried before closer out-of-state stations, the rules pertaining to carriage of independent stations do not. To the extent that the existing rules tend to preclude carriage of in-state programming, it is clear that they operate in a manner inconsistent with one of the stated purposes for their adoption.

11. It is also apparent that while the rules were intended to equalize, to some extent, the carriage of stations, on cable systems, because of the geographical locations of various television markets and their proximity to one another, carriage rights under the existing rules are quite unequal. As the rules now stand, a Washington, D.C. television station is available for carriage as far away as Miami, Florida and a Los Angeles station could be carried at least as far as Salt Lake City, Utah. Other stations, such as for example those in Philadelphia or Baltimore, because of their particular locations are available for carriage in a much more limited area.

12. Rules of general applicability are frequently harsh in some particular applications and some of the examples cited in the comments of cable interests as undesirable consequences of the existing rules may simply reflect this fact. But looked at in their totality it is difficult to conclude that the rules in their present form provide an understandable and coherent pattern of cable signal carriage consistent with the stated reasons for their adoption.

RULES IMPOSE COSTLY BURDENS

CABLE INTERESCS

13. The comments of cable interests clearly indicate that microwave and related costs are the single most detrimental byproduct of a strict application of the leapfrogging rules. Cable interests point out three factors inherent to the cost problem:

1. They are often forced to import distant independent signals from two or more directions thus doubling or tripling the costs of obtaining their full authorized signal complement.
2. Cable operators are often forced to construct new microwave routes at high costs in order to import signals consistent with the leapfrog rules while existing microwave routes carrying signals that would not be consistent with those rules are otherwise available.
3. The additional costs that must be expended to adhere to the requirements of the leapfrog rule often exceed the benefits to the cable system and in some cases cause the cable system not to be built.

Broadcast interests generally did not directly address this issue in their comments.

DISCUSSION

14. There are two factors which cause a cable system to import signals from different directions. First, there are the vagaries of geography, i.e. the two closest top twenty five markets are in different directions from the cable community. The second reason, however, is more fundamental to the problem cable operators face. A number of top-25 markets have only one independent signal; therefore, if a cable system is allowed to carry two or three independent signals it must often import signals from that many markets to receive the number of signals allowed under the carriage rules. If, however, a cable system is given a choice as to the markets it selects its independents from it will most likely select from those markets that have more than one signal in order to save on distant importation costs. A further example of how the rule works to inhibit cable operations that is cited by many cable interests is the St. Louis, Missouri television market. The two closest top-25 markets to St. Louis are Kansas City and Indianapolis, each with only one independent theoretically available, (presently no microwave routes existing) located over 100 miles distant, and in opposite directions from St. Louis. According to Cox Communications, the cable system in St. Louis will not be constructed until such time as it is allowed to carry the stations from Chicago, already being carried by some cable systems within the St. Louis market.[6] Cable interests allege that the microwave costs that would be incurred to import consistent signals when spread among the 60,000 potential subscribers will cause subscriber fees to rise above what their analysis suggests is a viable subscriber fee for that market. However, if they were able to import both independent stations from the Chicago market, which is the 3rd closest top-25 market to St. Louis and is available via existing microwave, the cable system could be constructed and subscriber fees would be reasonable.

[5] The confusion of purpose is further compounded if it is considered that a Boston, Massachusetts cable system could carry New York City signals whereas a system in Providence, Rhode Island, closer to New York, could not.

[6] Madison County Cablevision, supra.

15. A similar situation exists in Buffalo, New York. There, the two closest top-25 markets are Pittsburgh, Pennsylvania and Cleveland, Ohio, both located over 100 miles away and in opposite directions with no existing microwave routes. However, in Buffalo there are additional factors which make the situation even more difficult than that of St. Louis. First, New York City independent signals are available on an existing microwave route to nearby systems carrying these signals on a grandfathered basis. Second, the New York City signals are in-state signals while the markets with consistent signals are out-of-state. Third, the history of the signals whose carriage would be consistent with the rules is such that they have, in the past, sporadically gone off the air. This factor adds to the cable operator's risk when considering whether to invest in microwave routes. While numerous other examples have been given in the comments we feel that it is not necessary to discuss them all in order to point out the economic consequences of a strict application of the rules, as is dictated by the present waiver policy.[7]

16. It is clear to us from the examples cited that the operation of the leapfrogging rules in their present form can impose significant additional costs on cable television systems. These are typically costs which the systems would attempt to pass on to their subscribers in the form of rate increases. Further, it has been alleged, and we have no reason to doubt that it is true, that in some instances systems have not been constructed because the additional costs imposed by these rules make the operation of the system uneconomical. While cost alone is not sufficient reason for the abandonment of these rules if they serve other public interest purposes, such additional costs as the rules impose on the public and such diversion of cable industry resources as might otherwise be devoted to other purposes are important considerations to weigh in considering the desirability of the retention of the existing rules.[8]

RULES PREVENT THE CREATION OF "SUPER-STATIONS"

CABLE INTERESTS

17. Cable interests generally urge that the Commission's fear of super-stations resulting from unrestricted cable carriage of distant independents is unwarranted. NCTA states this is so because microwave costs discourage it and also because subscribers' desire for regional or specific programming heavily weigh against it. CATA claims that even if these larger market independent stations would form some type of cable-inspired network this would actually serve to benefit the public by affording increased competition to the networks.

18. In joint comments filed by 70 CATV companies it was stated, "Those stations with attractive, viable programming located in relevant markets and available at reasonable cost * * * (are) carried by natural selection." The operators submit that there is no great danger of a concentration upon just Los Angeles, Chicago or New York signals should leapfrogging restrictions be dropped. The reason for this, they claim, is that the common carriers recognize the distance from which a signal must be imported as a cost factor and charge higher rates for more distant cable customers. Thus, they declare, "there is an economic limit to the distance from which television signals can be obtained, and it would not be realistic to expect Los Angeles, New York or Chicago signals to be transmitted coast to coast merely because the leapfrogging rule is lifted." The operators contend that it is more likely that regional microwave systems will develop, fill out, and complete their natural market.

19. Citizens Cable of Allen County, Inc. sees no potential problem even if cable systems concentrate on carrying the distant independents from New York, Chicago and Los Angeles. Thus, they argue that even if every cable system in the country elected to carry WGN-TV, it would be difficult to see how this would lead to a further concentration of media when WGN would be only one of 20 potential signals that could be received. Cable television, by its very nature, tends to eliminate media dominance by giving people enhanced program choices.

20. Cable interests generally attack the entire super-station rationale on two grounds. First, they claim that the whole theory of super-stations is highly speculative with no real factual basis. Second, they argue that even if these so-called super-stations do become a reality they pose no threat to the broadcasting industry and would actually be a benefit to the public.

BROADCASTING INTERESTS

21. NAB declares that it is no longer a risk that cable operators will elect to leapfrog closer independents to carry the signal of major market independents but rather, "it is a demonstrable fact." They cite as an example a recent Commission decision authorizing the carriage of four Los Angeles independent stations on cable television systems in Kimball, Alliance and Sidney, Nebraska.[9] NAB concludes that this case demonstrates how remarkably easy it is for a cable system to import distant signals thousands of miles away, and posits that if the leapfrogging restrictions are lifted, cable operators will continue to do just that.

22. South Texas Telecasting Company, licensee of Television Broadcast Station KIII claims that it was this fear of the creation of super-stations which motivated the Commission to adopt the leapfrogging rule originally. South Texas envisions that independent stations from the largest markets would begin focusing their sales efforts on regional and national advertisers and charge advertising rates commensurate with their total viewership. This, it is urged, would afford these stations greater revenue for the purchase of syndicated and sports programming that television stations in smaller markets could never hope to attain, and carriage of such stations on cable systems in markets such as Corpus Christi could easily deprive non-cable viewers of the kind of quality programming stations like KIII currently provide.

DISCUSSION

23. The super-station argument for retention of leapfrogging rules is really a combination of arguments to which a short-hand identification has been assigned. It is to some extent a concentration of control argument, that stations which receive extensive carriage will have an undue control over television broadcasting. This particular rationale for retention is discussed elsewhere in this Report and Order and need not be repeated here.

24. Also included under this general term is the concept that stations which receive extensive carriage will thereby have their revenues significantly increased. These increased revenues will be used to purchase high quality programming and they will thus become "super-stations" in terms of the quality of the programming they broadcast. To follow this argument one step further, this high quality programming will give them a large audience on cable systems, undercutting local station audiences and revenues and hence the quality of their programming.

25. We do not believe there is any significant likelihood that local broadcast service will be undermined in this fashion through the importation of stations with super-attractive programming. Initially, as is discussed in greater detail below, we believe that the benefits a station receives from being carried on cable systems beyond the area where such stations may typically be picked up off-the-air are limited. If this is correct the economic base for the creation of stations of clearly superior audience appeal will not be developed. In the absence of such a base the suggested possibility that local service will be undermined cannot occur.

26. Moreover, even if it is assumed, arguendo, that benefits are derived from distant signal cable carriage, our experience with the economics of program production, attained principally in connection with our network prime time access rules, suggest that it would be highly unrealistic to expect to see a radical change

[7] See, Paragraph 25, Reconsideration of the Cable Television Report and Order, supra, and the Note to §§ 76.59(b)(2) and 76.61(b)(2) which states "It is not contemplated that waiver of the provisions of this subparagraph will be granted."

[8] These considerations are particularly well stated in the joint comments of the National Black Media Coalition and the National Citizens Committee for Broadcasting. While these comments set forth a number of reasons why the existing rules are unnecessary and should be deleted, their main point would appear to be that the rules impose significant costs which are an impediment to cable systems fulfilling their other public service obligations.

[9] Multi-Pix, Inc., 47 FCC 2d 1138, recon, denied, 50 FCC 2d 388 (1974).

in the quality of programming carried on selected independent television stations simply because they receive extensive cable carriage. Even if every cable television system in the entire country carried the same signal, that station's audience would not approach that of any one of the existing national networks. Accordingly, even assuming that distant signal carriage is beneficial, we fail to see how any radical change in the quality of the programming distributed would result.

MEDIA CONCENTRATION

CABLE INTERESTS

27. Cable interests generally deny that a fear of potential media concentration provides adequate support for retention of existing rules. Colony Communications, Inc., et al., argue that "there is no compelling rationale that the policy against concentration of media control is served by an anti-leapfrogging rule that would not also, for example, logically justify the Commission ordering the national television networks to disband." The Commission's decision in Macomb Cable TV, Inc., 32 FCC 2d 42 (1971), in which the Commission authorized cable carriage of WGN-TV over an objection that its carriage would unduly limit diversity of media control, is cited as persuasive argument against signal carriage limits based on this rationale. Others, such as for example the Community Antenna Television Association, urge that if additional cable-inspired networks developed this would have positive public interest benefits in terms of increased competition with the existing national networks.

BROADCAST INTERESTS

28. A number of broadcast interests, including Storer Broadcasting Company and the Association of Maximum Service Telecasters, cite, as a reason for retaining the rules in their present form, a concern with potential concentration of control problems that might otherwise develop from widespread carriage of a few major signals from the largest markets. The Association of Maximum Service Telecasters states simply that this concern "is as valid today as it was in 1968 when leapfrogging limitations were proposed and in 1972 when the present leapfrogging rules were adopted."

DISCUSSION

29. The Commission's rules contain limitations on the number of television stations that may be commonly owned, adopted for the purpose of preventing undue concentrations of control over television broadcasting.[10] What is urged here is that cable carriage has the potential to so increase the reach and audience of particular stations that the same policies should be brought into play through the adoption or retention of leapfrogging rules.

30. While we recognize the continuing validity of the policies that stand behind the broadcast multiple ownership rules, we find no evidence to suggest that the present leapfrogging rules are necessary to foreclose stations obtaining so much cable carriage that it could be concluded that this would "result in a concentration of control of television broadcasting in a manner inconsistent with public interest, convenience, or necessity."[11] Even were only a few stations to receive very extensive carriage, it is highly unlikely that any degree of concentration of media control comparable to that prohibited by the existing broadcast rules would develop.[12]

LEAPFROGGING RESTRICTIONS ARE NECESSARY TO PREVENT UNDUE AUDIENCE FRACTIONALIZATION

CABLE INTERESTS

31. In addressing this issue, the cable interests point out that any fractionalization caused to local stations was already taken into consideration by the Commission when it balanced the interests between cable and broadcast interests and promulgated the signal complement rules premised upon market sizes.

BROADCAST INTERESTS

32. The Association of Maximum Service Telecasters focused upon the issue of possible additional fractionalization caused by a change in the leapfrogging rules. It states, "The consideration of unnecessary additional fragmentation, also remains valid. In this connection, it is still a fact that stations in the very largest markets have the opportunity to acquire and broadcast syndicated series and feature film programs before those programs become available to stations outside the very largest markets. As a result, when distant signals are obtained from the very largest television markets, local stations, particularly those outside the top-50 markets, have less opportunity to avail themselves of syndicated program exclusivity rights than they have when distant independents are obtained from markets of more comparable size."

DISCUSSION

33. At the outset we wish to stress that this proceeding was initiated to look into possible modification of the Commission's leapfrog rules. It was not initiated to look into the Commission's regulations regarding signal complements. A cable television system is permitted to carry a set number of distant independent signals depending on the following:

(1) Whether the community of the cable television system is located within the specified zone of a television broadcast station;

(2) The size of the market that the community of the cable television system is located within; and

(3) Any grandfathering rights the cable television system may possess.

A revision in the leapfrogging provisions will not affect the authorized signal complement of any cable television system. While we have received some comments from broadcasters addressing the issue of fractionalization most of these comments focused on the fractionalization caused by the importation of any distant independent into the community. The 1972 Report and Order dealt extensively with the establishment of our current signal complements and we will not repeat that reasoning as part of this proceeding.[13]

34. It is possible that some stations may have benefited from these rules because cable systems in their markets were forced to carry stations with limited audience appeal—stations with limited broadcast hours, specialized formats, or weak programming. This was not, however, what the rule was intended to accomplish nor does it appear to us that this would be an appropriate objective since it would apply unevenly, giving some stations, more or less at random, protections entirely without regard to need and without regard to the interest of cable subscribers in access to desirable program product.

RULES PROMOTE BOTH LOCALISM AND CONSISTENCY WITH ALLOCATIONS POLICIES

CABLE TELEVISION INTERESTS

35. The NCTA states, at the outset, that the leapfrogging rules should be abolished because the current rules work to deprive cable television system operators of sufficient flexibility in choosing distant signals. This in turn deprives subscribers of the diversity of programming they might otherwise enjoy. NCTA objects strenuously to the contention that cable systems, while opting for stations from large markets, might by-pass closer stations which supply programming more likely to be of interest to subscribers in the cable community.

36. The cable interests argue that if, indeed, the closer independent stations supplied programming that was more likely to be of interest to subscribers in the cable community why then would a cable operator choose a more distant signal? The answer asserted is that they wouldn't. What is more likely, cable proponents argue, is that the proposition that closer stations will have programming of interest to the cable community in most cases is unfounded. NCTA states that mere geographical proximity does not necessarily guarantee that a closer station is offering programming more likely to meet the cable television community's interest to a greater degree than a more distant signal. Logic would suggest, NCTA claims, that if, in fact, closer stations did supply some programming more likely to be of interest in the cable community then the cable operator, seeking to attract the interest of potential subscribers, would attempt to secure such programming.

[10] Section 73.636.

[11] Section 73.636(a)(2).

[12] Under the existing broadcast policy a single owner is allowed as many as seven television stations, no more than five of which may be VHF stations and national television networks are permitted affiliates throughout the nation.

[13] Cable Television Report and Order, supra, paras. 74-91.

37. NCTA augments its argument on this issue by citing the Commission's own position in regard to waivers of the leapfrogging rule for in-state signals. In "Commission on Cable Television of the State of New York," FCC 74-1148, 43 FCC 2d 836 (1973), recons. denied, FCC 74-99, 45 FCC 2d 283 (1974), and "First Illinois Cable TV, Inc." FCC 74-125, 45 FCC 2d 304 (1974), recons. granted in part, FCC 74-694, 47 FCC 2d 715 (1974), the Commission granted waivers of the leapfrogging provisions so that a more distant independent signal licensed to a city in the same state as the cable system could be carried in lieu of a closer signal outside the state. The Commission recognized that these signals were of greater interest and value to the cable subscriber than a closer out-of-state signal from a top-25 market.

BROADCAST INTERESTS

38. The broadcast interests uniformly adhere to the proposition that leapfrogging closer signals in favor of more distant ones deprives the public of the opportunity to receive television stations which are more likely to provide programming responsive to their needs and interests. The NAB states that relaxation of the leapfrogging rules would contravene the public interest in a responsive local service—a concept that is the very cornerstone of the Commission's policies regarding development of television broadcasting.

39. NAB claims that leapfrogging, if left unrestricted, could lead to exclusive carriage of only the top major market independent stations in the country, extending these signals for thousands of miles to all parts of the country and this is blatantly inconsistent with the need of local stations to provide local service. On this same issue, the Association of Maximum Service Telecasters states that this consideration is as valid today as it was in 1968 when the leapfrogging limitations were proposed and in 1972 when the present leapfrogging rules were adopted. AMST further urges that one of the underlying purposes of the leapfrogging rules was to maintain consistency with the Commission's fundamental allocations policies of section 307 (b) of the Communications Act of 1934, as amended.

DISCUSSION

40. Our continuing experience with the leapfrogging rules and the comments that we have received have convinced us that in many instances, when dealing with a distant independent signal there is only a small fraction of programming that would be of particular interest to the remotely-located community of the cable television system. This is particularly true in the South and the West where only a handful of top-25 markets are located and cable television systems are forced to import their distant independents from distances in excess of 1,000 miles. It can hardly be contended that these stations offer programming that is of particular local interest to the community of the cable television system. The inverse of this situation occurs in the East and Midwest. In these areas of the country, the operation of the leapfrogging rule to bring programming of greater interest to the cable subscriber is stymied by a proliferation of top-25 markets. In these areas one top-25 market quickly replaces another and the difference in distance from a cable community to one of several top-25 markets is often only a matter of a few miles.[14] It is difficult to substantiate a position which holds that independents in one top-25 market located only 10 miles closer to the cable community than another top-25 market would have programming of appreciably more interest to cable subscribers based strictly on its proximity to the cable community. We believe that if a distant independent does indeed have programming that is of particular interest to the cable community then the cable operator will elect to carry that signal and the Commission need not adhere to leapfrogging rules to attempt to achieve that purpose. Indeed, in situations where an independent station originates substantial programming of regional interest—particularly sports—cable interests often prefer such a station to a large distant independent station, especially in those cases where microwave costs are higher to import the latter signal.

41. Lastly, we reject the assertion that the maintenance of the leapfrogging rules is mandated by the allocations policies of section 307(b) of the Communications Act.[15] We treated this subject at length in our 1972 Cable Television Report and Order and concluded (Para. 89) that cable television can aid in achieving the program diversification sought by our allocations policies and that the public interest would be served by permitting a new complement of signals premised upon market size. This instant action in no way affects this basic complement of signals—instead, and for the first time, it affords discretion in the selection of which signals are of most interest to particular communities.

RULES ARE NECESSARY TO SPREAD THE BENEFITS OF CABLE CARRIAGE TO STATIONS THAT MIGHT OTHERWISE BE PASSED OVER

CABLE INTERESTS

42. The NCTA claims that the leapfrogging rule does not work towards the accomplishment of this goal but rather subverts it. This is due, NCTA contends, to the Commission's signal carriage rules which are the real restraint on the number of television stations that participate in the benefits of cable carriage. The signal carriage rules work in conjunction with the leapfrogging rules to encourage cable systems to select independent stations from the two nearest top-25 markets and to by-pass 31 of the nation's 92 independent stations which are not in top-25 markets. NCTA indicates that the two important factors in the selection of distant independents by cable operators are subscriber appeal and financial ease of importation. Since it is financially advantageous for cable operators to select all their distant independents from the same market or at least the same direction, to avoid excessive microwave costs, and since most cable television systems in top-100 markets can carry two distant independents, cable systems will most likely select independents from the eight major markets with two or more licensed independents, bypassing other stations.

43. NCTA concludes that the present rules discourage cable operators, through added microwave costs and inability to carry as many stations as desired, from going to many markets that have desirable independents. If a television station happens to be in a two-independent station market, and if it happens to be in the nearest top-25 market then it will be able to obtain cable carriage. If it doesn't meet those criteria then, NCTA asserts, the working of the leapfrogging rules guarantee that it won't be carried.

44. The Community Antenna Television Association takes a different posture on the benefits of cable carriage. CATA claims "the reason d'etre" of CATV is not to provide television stations with the benefits of cable carriage. That is a benefit that happens to flow to the television station as a consequence of CATV's function in supplying reception to viewers. The primary concern should be with program choice to the viewer, not with television broadcaster's prerequisites. CATA urges that any CATV policy based on promotion of broadcasting—a long way in concept from preservation of broadcasting—is jurisdictionally unsound and wrong in policy.

BROADCAST INTERESTS

45. The American Broadcasting Companies, Inc. addressed the question of the benefits of cable carriage to distant television broadcast stations in its submission. ABC declared that it "would be difficult to sustain the proposition at this time that cable carriage of distant television signals provides significant benefits to the stations involved." This view is supported by comments of WGN Continental Broadcasting Company, licensee of Station WGN-TV, one of the more sought after distant independents. WGN declares that, "it is aware that it is among the most popular of independent television stations in the country with respect to carriage by cable television systems. WGN's pride in the popularity of its programming is tempered by the realization that it receives neither revenues from the carriage of its programs nor advertising

[14] We note that a substantial number of waiver requests have been submitted seeking relief from a stringent application of mileage standards.

[15] The direct applicability of section 307(b) policies to carriage of a station beyond its Grade B contour was given some early consideration by the Commission in Alabama Microwave, Inc., 1 FCC 2d 342 (1965). There it was concluded that, since neither section 307(b) nor the Commission's table of assignments contemplated service by the station in question to the cable community, there would be no violation of the section 307 policy if the cable system ceased carriage of the station in question.

revenues based on increased audience outside the metropolitan area of Chicago where the WGN-TV signal is received off-the-air."

46. In general, comments of broadcasters support this view, although there were some exceptions. For example, WPHL-TV, Inc., licensee of Station WPHL-TV (Ind., Channel 17) Philadelphia, Pennsylvania states, "while the precise dimensions of the benefits of being carried as a distant signal are not yet known, there are likely to be some benefits which surely struggling UHF stations such as WPHL-TV should participate in as well as the more solidly established VHF independents such as those in New York." The comments of Sarkes-Tarzian, Inc., license of Television Broadcast Station WTTV (Ind., Channel 4) Bloomington, Indiana take a middle-of-the-road approach. While recognizing that WTTV currently does not benefit in any way from carriage on cable systems beyond its normal service area they are fearful that in several years there may be a benefit to such carriage which it will not share in because cable systems will choose to carry WGN-TV rather than WTTV. Westport Television, Inc., licensee of KBMA-TV (Ind., Channel 41) Kansas City, Missouri argues that cable carriage extends the total reach of independent stations by extending them over a larger geographic area than network stations, making them more competitive in gaining national and regional advertisers. KBMA-TV, for example, is said to be carried on nearly 300,000 cable homes, nearly one-half of which are outside its Grade B coverage area. KBMA-TV suggests, for Commission consideration, adoption of one or more of the following alternatives:

(A) Expansion of the number of distant independent signals permitted to be imported by not counting as a distant signal, any in-state independent station, nor counting as a distant signal, any signal within 200 miles of the cable system, whether it is within state or not. If a state does not have an independent station, the cable systems may designate the closest independent as "in-state" and not have it counted as a distant signal.

(B) Mandatory in-state coverage of independent signals, with no importation of a distant signal until this obligation is fulfilled.

(C) Distant signal priority should be given to adjacent state UHF independent stations before a leap-frogged signal may be brought in. An exception could be in the case of the large states with geographical distances in excess of 500 miles. Considering most requests for waivers of leap-frogged signals are for stations at distances further than this, this restriction does not seem unreasonable, in order to protect the UHF independent stations, particularly those such as *KBMA-TV* that are situated in border cities and whose Grade B signals reach into two or more states.

DISCUSSION

47. Traditionally, and particularly in the copyright context, broadcasters have urged that they receive no benefit from distant signal cable carriage and cable interests have argued that broadcasters are directly benefited by that carriage. In this proceeding, the positions of the two industries most directly interested in this question are somewhat confused. Some cable interests say there is clearly a benefit and some say there is none. Some broadcasters are emphatic that there is benefit from carriage as a distant signal and some say there is no benefit. Which answer is correct is of particular importance because at the time the rules now in existence were adopted the Commission believed that such rules were needed because without them "there would be no general participation by broadcast television stations in the benefits of cable carriage,"[16] and that without them it would be "foreclosing any benefit of cable carriage to many stations."[17] Consistent with this effort to spread the benefits of carriage, the rules also afforded UHF stations some carriage priority in those few situations where three distant independent television stations could be imported into one of the fifty largest television markets.[18]

48. While we do not ourselves have a conclusive answer to this question, we are much less confident at this point than we were when the rules were adopted, that the objective of "spreading the benefits of cable carriage" is important enough or the "benefit" significant enough to justify the administrative and economic costs that the rules impose.

49. We have no doubt that cable carriage can aid television stations to reach an audience.[19] For stations generally, the most critical audience is that in its city of license and immediately surrounding market area. Our cable television mandatory signal carriage rules are intended to assure stations access to this audience. This area, however, does not necessarily exhaust the area from which advertiser support may be drawn. A television household in an immediately adjoining market or right outside of a station's Grade B contour may also be of value. In this general area, signals are available to cable systems over-the-air without the aid of microwave relay facilities. Because of the costs of such microwave facilities,[20] cable systems are strongly motivated, even in the absence of leapfrogging rules, to carry those signals available over-the-air and therefore most likely to be benefited by cable carriage.

50. We had suggested in the Notice in this proceeding, paragraph 10(f), the possibility of rules keyed to a designated zone within which carriage would likely be of some benefit. We have decided not to attempt rules along these lines because we believe the general economic incentives in operating a cable television system make them unnecessary. Because of the expense involved and the number of additional subscribers that would have to be obtained to justify such an expense, cable operators have a very strong incentive to carry signals available off-the-air rather than those which can only be obtained over the facilities of a private or common carrier microwave system.

51. It is beyond this immediate area, where signals are only available through the use of microwave relay facilities, that existing rules therefore have the most significant effect and where the question of "benefit" from carriage is most critical. After reviewing the comments and completing our own independent analysis, it is our conclusion that there is little, if any, benefit to a station in cable carriage beyond that area where the over-the-air availability of the signal would dictate carriage even in the absence of leapfrogging rules. In view of this, our previously articulated belief that rules of this type were necessary to spread the benefits of cable carriage no longer provides support for leapfrogging rules.

52. The fact that distant signal carriage is not generally of significant benefit is something of a paradox. Stations obtain their financial support by delivering audiences to advertisers. Typically, it might be supposed that the larger the audience the more the advertiser could be charged. Distant signal carriage should increase a station's audience and therefore its revenues. Stations commenting in this proceeding, however, generally deny that this is true and our own effort to find any significant correlation between station revenues and existing cable distant signal carriage bears out that they are correct at least insofar as carriage far enough distant to require the use of common carrier microwave relay facilities is involved.

53. In an effort to determine if there is any relationship between station revenues and the extent of distant cable carriage received, we compared the revenues of a large sample of independent television stations with the amount of cable carriage via common carrier microwave that each received, using a regression analysis technique.[21] While other variables, such as a station's prime time circulation or the general affluence of the market in which it operated, proved to have a significant correlation

[16] Cable Television Report and Order, supra, at Paragraph 92.

[17] Reconsideration of Cable Television Report and Order, FCC 72-530, 36 FCC 2d 326 (1972) at Paragraph 25.

[18] Section 76.61(b)(2).

[19] Cable can be particularly useful to stations overcoming handicaps associated with UHF broadcasting stations and in mountainous areas where there are pockets of poor reception.

[20] Exclusive of land and site preparation expense, a single hop, one channel microwave installation may cost as much as $50,000.

[21] Regression analysis is a statistical method which derives an equation to explain the relationship between a dependent variable and one or more independent variables. This relationship is used to explain the variation among the observed values of the dependent variable and the relative significance of the independent variables in explaining this variation.

with station revenues, no significant correlation between station's revenues and microwave distributed distant signal carriage could be found.

54. This paradoxial conclusion, that increased audience does not increase a station's revenues is apparently explained by a number of factors. First, carriage of a signal by a distant cable television system does not assure advertisers any exposure in the distant market. Our syndicated program exclusivity rules[23] operate, in the 100 largest television markets, to give local stations certain exclusive rights in the programming they have purchased. When stations enforce their rights under these rules, local cable systems are required to delete carriage of certain syndicated programs from distant stations. When the programs are deleted so typically is the associated advertising.

55. Second, distant carriage is of no value to advertisers who have no outlet for their product in the distant market. This would generally include local advertisers, which, annual reports of television stations to the Commission indicate, comprise approximately 40 percent of the sales of independent television stations, as well as some proportion of regional advertisers when carriage is extended outside of the region. A car dealer in one city will not be likely to pay for audience in another nor will a the distributor of a regional beer pay for audience outside the region where his beer is marketed.

56. Third, it is difficult for stations to document to advertisers that significant additional exposure on cable is involved. While we are aware that the promotional literature of some independent station makes mention of the extensive cable carriage received, it nevertheless appears that the amount and value of such carriage is hard to document in a manner which is convincing to advertisers. Audience ratings, because they are based on sampling techniques, always contain a degree of uncertainty. Small audiences, are, because of this degree of uncertainty, given little credence. And such ratings in distant markets frequently show up in ratings reports in a "miscellaneous" or "other" category.

57. Finally, while such distant market exposure as does take place and is documented may be "valuable" to advertisers in an abstract sense, the manner in which advertising compaigns are generally produced may well preclude potential savings from being passed on to the station whose signal was being carried. That is, cable distant signal carriage might not be adequate to reach the advertiser's target audience in the distant market so that it would have to buy some additional advertising time on stations in that market in any case.

58. As a result of these factors and perhaps others, distant cable carriage, at this time, does not generally appear to be of significant value to television stations. We have considered the filing of WPHL-TV, WTTV, and KMBA-TV, and others who suggest the possibility of a contrary view.[23] The filing of WTTV and WPHL are quite tentative in their view that some benefit may be available and offer no supporting evidence. KMBA is somewhat unique in its effort to cultivate and market its cable carriage. This may suggest one caveat to the general proposition set forth above, namely that while advertisers generally are not interested in distant cable carriage, a station which seeks to exploit this market may find some advertisers who are. Nevertheless, we do not believe this significantly undercuts the general proposition that distant cable audience is not of great value to most television stations. We recognize that a number of other caveats to this general statement may also be in order. Thus, for example, stations may receive compensation for certain types of advertisements based on the number of responses to the advertisement from the public. A phonograph record or a kitchen utensil, for example, is advertised for sale through the mail and the station is paid based on the number of responses or orders received. Compensation for such advertisements could be completely independent of the location where they are seen.

59. Because of these caveats and the variety of individual market circumstances that may arise, we cannot say with certainty that there are no benefits to stations from cable distant signal carriage. However, we do not believe that it is realistic at this time to retain rules based on the premise that they are spreading the benefits of cable carriage. Independent incentives, in the absence of rules, provide some assurance that stations available over-the-air will be selected for carriage before those which require microwave relay, so that stations will obtain carriage rights in the areas where they are most likely to be benefited. Stations carried beyond this general area appear to receive negligible if any benefit from cable carriage. Leapfrogging rules can, therefore, no longer be justified on the grounds that they are necessary to spread among television stations the benefits of cable carriage. While changes may take place in audience rating procedures, the technology of distant signal distribution, the size of the cable industry, and in the time buying and selling objectives of stations and advertisers they might, in the future, render this distant cable audience somewhat more important to stations, we do not believe the mere possibility of such future changes, when balanced against the burdens the rules impose, provide adequate justification for the retention of the rules in their present form.

60. At the same time we do believe that there is one vehicle we may utilize as a balancing factor in the action we are taking today. While we will no longer require cable television systems to select their distant independent station from certain prescribed markets, we will require a cable television system in one of those markets that is permitted to import three distant independent television signals, to import, as one of these three stations, a UHF television broadcast station. This should, without unduly limiting cable's signal carriage flexibility, provide some support to UHF broadcast in terms of whatever benefits may, now or in the future, be available from distant signal carriage.

CONSENSUS AGREEMENT

BROADCAST INTERESTS

61. Broadcast interests have strenuously argued that no change in the leapfrogging rules should be adopted because the substantive rules in question were part of the consensus agreement preceding the 1972 Cable Television Report and Order, supra. Specifically, the NAB argues that broadcast interests agreed to the liberalized signal carriage of distant independents in return for the cable interests' promise to support specified copyright legislation described in the consensus. NAB contends that after the adoption of the current rules it became evident that the cable interests would not fulfill their side of the agreement. And so now, three years later, copyright legislation has yet to be enacted. Additionally, NAB alleges that any change in the leapfrogging rules would upset the finely tuned and delicately balanced regulatory approach achieved by the 1972 rules that could be achieved only by enaction of copyright legislation as contemplated by the consensus.

CABLE INTERESTS

62. NCTA addresses the consensus agreement by quoting from the 1972 Report and Order when the Commission said that it retained, "full freedom and responsibility to act as future developments warrant concerning such matters as network and syndicated exclusivity and leapfrogging."

DISCUSSION

63. We cannot agree that the Commission is precluded from adopting rules otherwise found to be in the public interest because they are at variance with the consensus agreement. Coincident with the adoption of the very rules in question the Commission noted that it retained full freedom and, indeed, the responsibility to make changes in the rules as developments warranted. The possibility of future changes in the leapfrogging rules was specifically noted.[24] Such flexibility is essential to our cable television regulatory program and we believe that our action today constitutes

[23] Section 76.151.

[23] We have also considered the alternative rules suggested by KBMA-TV but believe they are beyond the scope of this proceeding to the extent they involve a change in the number of distant signals that could be carried rather than a change in the rules relating to where the signals presently allowed could be obtained from.

[24] Cable Television Report and Order, supra,, at paragraph 66.

a reasoned and appropriate refinement in our cable regulatory program. We recognize that these rules are but a part of an overall program ordering the relationship between cable television systems and television broadcast stations but we do not believe the change proposed in this proceeding so disturbs the regulatory balance that its consideration ought await some more fundamental overall review of the rules. Finally, the copyright matter is now actively under consideration by the Congress and we are not persuaded that changes in the leapfrogging rules should await the outcome of or otherwise be directly related to those deliberations.

SPORTS PROGRAMMING

64. The comments of the Commissioner of major league baseball deserve special attention since they were the most substantive comments that focused directly on the issue of sports programming. The Commissioner stated, "baseball strongly opposes any significant relaxation of the Commission's leapfrogging rules. We feel that the policy goals reflected in the current leapfrogging rules of reinforcing local and regional telecasting are worthwhile and in the public interest." Additionally, the Commissioner declares that those policy ends are in line with television practices in baseball whereby individual clubs have established team telecast networks in each region served by a particular club. Baseball then declares:

> [that] the significant relaxation of the leapfrogging rulesfostering the importation of 'super-stations' from New York, Chicago and Los Angeles—would undercut the viability of this highly developed series of regional networks which serve local and regional needs. It would tend to concentrate greater power in the broadcasting complexes of our larger cities. The opportunities for cable to jettison programming of local and regional interest and import 'super-station" independents is highlighted for baseball because so much of its programming is originated by independent stations.

Baseball then declares that a relaxation of the leapfrogging rules would largely vitiate the Commission's decision in the "Report and Order in Docket 19417."[25]

65. While Baseball's argument is couched largely in terms of avoiding the creation of super-stations, an argument which we have treated and rejected, Baseball's real fear seems to be identical to the one it expressed in Docket 19417, that a lifting of the leapfrogging rules will cause an unacceptable degree of audience fragmentation. We considered and rejected this argument in the Report and Order in Docket 19417, supra. At paragraph 42 we stated:

> We are not persuaded by these arguments of audience fragmentation. Our responsibilities under the Communications Act to foster an efficient, nation-wide communications service, compelled us to issue cable television signal carriage, program exclusivity and anti-siphoning rules which we have determined will adequately protect the ability of television broadcast stations to serve the public. We can find no public interest rationale in terms of our national communications policies for affording sports programming additional protection against audience fragmentation. Sports is but one form of television programming, and must compete for audience with other programs provided by local television stations and cable systems. Absent convincing evidence that distant signal sports importations threaten to undermine local conventional television service, we are not prepared at this time to issue new rules to sustain the audience levels of established television broadcast stations at the expense of existing and potential cable television viewers.

66. Nothing now presented in the comments of the Commissioner of Baseball persuades us that our judgment in Docket 19417 was incorrect or that rules beyond those adopted in that proceeding are now necessary. Carriage of distant signal sports programming, by providing cable subscribers with additional program choices, almost inevitably has some disruptive effect on existing television viewing patterns. The question for us, however, is not whether existing patterns are upset, but whether there will be some adverse impact on television broadcast service to the viewing public. Except through audience fragmentation, a matter considered and taken into account at the time the signal rules were initially adopted and again in Docket 19417, we fail to see how the elimination of the leapfrogging rules would create such an adverse impact.

67. While the comments have been voluminous both for and against the leapfrogging rules generally, as well as in their specific application to independent television signal carriage, there has been little comment directed toward the rules as they apply to network stations.[26] This may have resulted from the fact that, although the rationale for the establishment of network leapfrogging rules was much the same as for the independent stations rules, the Commission has been more flexible in its attitude toward waivers of these rules.

68. Although the network rules have been less troublesome than those relating to independent stations, the rationale that moves us to delete the independent station rules also suggests that the network station rules should be deleted. Even without the present rules we do not anticipate that carriage patterns will vary drastically from what they now are. This is because there are network affiliated stations spread throughout the country. Usually a cable operator need go no great distance to fill its network signal complement and because of the economics of obtaining microwave relay service, there would be few instances which would induce a cable operator to leapfrog a closer network affiliate to select a more distant affiliate. Moreover, network stations are more similar to one another in terms of programming than are independent stations so that this inducement to leapfrog is also reduced. There might be such an inducement where a cable operator has selected its independent station from a distant market which also can supply the missing network signal. But even under the existing policy we have found it appropriate to grant waivers so as not to force the cable operator to bear the cost of constructing a new microwave route.[27] In light of the above and in view of the action we are taking with respect to the independent leapfrogging rule we deem it desirable to also delete the network leapfrogging provisions.

CONCLUSION

69. The existing rules have been supported as both achieving desirable social goals and minimizing adverse effects on the structure of the television broadcast industry. They have been attacked as irrational, unnecessary, expensive, and as failing in their intended goals. It is our conclusion, after having reviewed all of these arguments and given consideration to the economic factors governing the interrelationship between the broadcast and cable industries, that the arguments in favor of deleting the rule generally outweigh those in favor of retaining it. The most critical and difficult question involved—to what extent distant cable carriage is of benefit to those stations carried—was one on which there was little agreement in the comments. While there may be some benefits from such carriage, they are sufficiently minimal that no commenting party identified them with specificity. The burdens the existing rules impose are considerable and we are not persuaded that there are counterbalancing reasons as to why the rules should be retained. We are, accordingly, and with the one exception mentioned in paragraph 60, deleting these rules in their entirety.

70. In taking this action we fully recognize that there are new developments on the horizon which bear careful scrutiny. As several parties have indicated in their comments, the use of satellites in the dissemination of television signals to cable television systems may soon be a realistic possibility. The action we take today is based on available data and technology but with an eye to future developments. While we do not believe that the use of satellites will create carriage patterns inimicable to the public interest, the precise nature of future developments in this area cannot be foretold with precision. We will, therefore, continue to monitor the effect of the abolition of the leapfrogging rule with an eye to the effect the use of satellites may have. If we find that "super-stations" are, in fact, being created, and that their creation is working to the detriment of

[25] FCC 75-819, 54 FCC 2d 265 (1975); reconsideration denied, FCC 75-1235, —? FCC 2d —(?) (1975).

[26] Sections 76.59(b)(1) and 76.61(b)(1) of the Commission's Rules.

[27] See notes to §§ 76.59(b)(1) and 76.61 (b)(1).

the public, appropriate corrective measures will be taken.

Authority for the adoption of the rules in the Appendix attached hereto is contained in sections 2, 3, 4(i) (j), 301, 303, 307, 308, and 309, of the Communications Act of 1934, as amended.

Accordingly, it is ordered, That part 76 of the Commission's rules and regulations, is amended, effective February 25, 1976, as set forth below. *It is further ordered,* That this proceeding is terminated.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 48 stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085; (47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309))

Adopted: December 19, 1975.

Released: January 20, 1976.

FEDERAL COMMUNICATIONS COMMISSION,[23]

[SEAL] VINCENT J. MULLINS, *Secretary.*

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is revised as follows:

1. Section 76.59(b) is revised to read as follows:

§ 76.59 Provisions for smaller television markets.

* * * * *

(b) Any such cable television system may carry sufficient additional signals so that, including the signals required to be carried pursuant to paragraph (a) of this section, it can provide the signals of a full network station of each of the major national television networks, and of one independent television station: *Provided, however,* That, in determining how many additional signals may be carried, any authorized but not operating television broadcast station that, if operational, would be required to be carried pursuant to paragraph (a)(1) of this section, shall be considered to be operational for a period terminating 18 months after grant of its initial construction permit.

* * * * *

2. Sections 76.61(b) and (c) are revised to read as follows:

§ 76.61 Provisions for first fifty major television markets.

* * * * *

(b) Any such cable television system may carry sufficient additional signals so that, including the signals required to be carried pursuant to paragraph (a) of this section, it can provide the signals of a full network station of each of the major national television networks, and of three independent television stations: *Provided, however,* That in determining how many additional signals may be carried, any authorized but not operating television broadcast station that, if operational, would be required to be carried pursuant to paragraph (a)(1) of this section, shall be considered to be operational for a period terminating 18 months after grant of its initial construction permit.

(1) Whenever, pursuant to this section a cable television system is permitted to carry three additional independent signals, one of these signals must be that of a UHF television broadcast station.

(2) Whenever, pursuant to Subpart F of this part, a cable television system is required to delete a television program on an independent signal carried pursuant to this section, or a program on such a signal is primarily of local interest to the distant community (e.g., a local news or public affairs program), such system may, consistent with the program exclusivity rules of Subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the cable system need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

(c) After the service standards specified in paragraph (b) of this section have been satisfied, a cable television system may carry two additional independent television broadcast signals: *Provided, however,* That the number of additional signals permitted under this paragraph shall be reduced by the number of sig-signals added to the system pursuant to paragraph (b) of this section.

[FR Doc.76-2345 Filed 1-26-76;8:45 am]

[23] Separate statement of Commissioner Lee in which Commissioner Hooks joins; concurring statement of Commissioner Quello, and Commissioner Washburn filed as part of the original document.

[Docket No. 20560; RM-2522; FCC 76-14]

PART 89—PUBLIC SAFETY RADIO SERVICES

Nationwide Police Emergency Communications Channel

Report and order. In the Matter of Amendment of Part 89 of the Commission's rules and regulations to designate the frequency 155.475 MHz as a common, nationwide police emergency communications channel, Docket No. 20560; RM-2522.

1. On August 7, 1975, the Commission released a notice of proposed rulemaking to designate the frequency 155.475 MHz exclusively for use, on a nationwide basis, in police emergency communications networks operated under statewide law enforcement emergency communications plans. The notice was published in the FEDERAL REGISTER on August 14, 1975, (40 FR 3461). Our proposal was in response to a petition (RM-2522) filed by the Associated Public Safety Communications Officers which was supported by comments filed by representatives of police authorities.

2. Comments were filed by the Missouri Council on Criminal Justice; Fort Lauderdale, Florida Police Department; Ohio State Highway Patrol; Associated Public Safety Communications Officers, Inc., (APCO); International Association of Fire Chiefs (IAFC); Florida Division of Communications; Texas Department of Public Safety; Washington State Patrol (WSP); California State Communications Division; State of Illinois; Illinois Chapter, Associated Police Communication Officers, Inc., (Illinois APCO); and the Ohio Law Enforcement Communications Committee. Reply comments were filed by APCO.

3. Each of the comments have been carefully considered and, generally, they supported the designation of a common police emergency communications channel. The rather limited opposition to the proposal came from those who either now operate systems on the frequency 155.475 MHz or who plan to use it in the near future. A summary discussion follows:

APCO, Ohio State Highway Patrol, Illinois APCO, and the Ohio Law Enforcement Communications Committee supported the proposal, but suggested that existing users of the frequency be allowed to continue their operation until 1985 to allow sufficient time to amortize their equipment. The Texas Department of Public Safety and the Florida Division of Communications while approving the emergency channel concept, oppose use of the 155.475 MHz frequency, citing possible adjacent channel interference. The Fort Lauderdale, Florida Police Department urges the implementation of the 155.475 MHz common emergency channel, but argues against designating similar channels in other frequency bands. WSP opposed the proposal because of concern that it will disrupt their present operations on 155.475 MHz and argued that a single nationwide common frequency operated on a simplex basis will not adequately meet the needs for which it is intended.

4. We agree with the suggestion that a longer grandfathering period should be provided. Continued use of the frequency by the few existing state police users should not prevent other states from implementing the frequency as an emergency communications channel and we are, therefore, extending the grandfathering period until January 1, 1985.

5. We do not agree with those arguments that harmful interference will result to the adjacent frequencies 15 KHz removed from 155.475 MHz. Because the mode of operation as an emergency communications channel should result in less traffic on this frequency than would other uses, there should be a lower degree of interference. With proper operating discipline and state-of-the-art radio equipment, interference potential should be further reduced.

6. In the notice we also sought comments as to the designation of similar emergency channels in other frequency bands. The comments indicate that designation of common police emergency channels in other frequency bands would be premature at this time due to the difficulty in finding suitable frequencies, and that the complexities involved in interfacing these different frequency bands would derogate the intended purpose of having a common police emergency channel. Accordingly, we feel that the

designation of a single frequency, 155.475 MHz, would best serve those needs for a common police emergency channel at this time. IAFC urged the Commission to provide a similar nationwide frequency for fire emergencies; however, we cannot include this request within the scope of this proceeding.

7. We agree with those comments that mobile relay operation on the emergency channel would be desirable in some locations. However, because of the limited use which will be made of this channel, we do not see sufficient justification in the reservation of an additional frequency solely for this purpose. If a particular state concludes that mobile relay operation is essential for its purposes, then it could select another VHF frequency for use with 155.475 MHz, provided that base station transmit/receive capability is maintained on 155.475 MHz and adequate spectrum is available.

8. While it is necessary for each state to develop a detailed plan for its emergency communications network before implementation, the Commission will not impose a standard operating plan on all states since unique requirements and constraints must be taken into account in developing an appropriate plan in each state.

9. In view of the foregoing, it appears that the public interest can be served by adopting the rule amendment set forth below. *Accordingly, it is ordered,* That, pursuant to authority contained in section 303 of the Communications Act of 1934, as amended, Part 89 of the Commission's rules and regulations is amended effective February 26, 1976: *It is further ordered,* That this proceeding is hereby terminated.

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

Adopted: January 14, 1976.

Released: January 21, 1976.

FEDERAL COMMUNICATIONS COMMISSION,[1]
VINCENT J. MULLINS,
Secretary.

It is proposed that the Commission's rules and regulations be amended as follows:

Section 89.309(g) is amended by the additon of a new limitation (20) to the frequency 155.475 MHz, and paragraph (h) is amended to read as follows:

§ 89.309 Frequencies available to the Police Radio Service.

* * * * * *

(g) * * *

Frequency or band	Class of station(s)	Limitations
* * * * *		
MHz		
* * * * *		
155.475	do	2
* * * * *		

(h) * * *

(20) The frequency 155.475 MHz shall be available on a nationwide basis and shall be assigned for use in police emergency communications networks operated under statewide law enforcement emergency communications plans. Operations presently authorized on 155.475 MHz which are not in accordance with the limitation may continue until January 1, 1985.

[FR Doc.76-2343 Filed 1-26-76;8:45 am]

[1] Commissioner Lee absent.

Title 49—Transportation

CHAPTER I—DEPARTMENT OF TRANSPORTATION, MATERIALS TRANSPORTATION BUREAU

SUBCHAPTER C—OFFICE OF HAZARDOUS MATERIALS OPERATIONS

[Docket No. HM-124, Amdt. 178-38]

PART 178—SHIPPING CONTAINER SPECIFICATIONS

Bottom Outlet Valves on MC 312 Cargo Tanks

The purpose of this amendment to § 178.343-5(b) of the Hazardous Materials Regulations is to provide an alternate means of protecting bottom outlet valves on MC 312 cargo tanks to assure against the accidental escape of liquid cargoes. Section 178.343-5(b) presently requires this protection be provided by the use of bottom outlet valves equipped with a shear section.

On March 26, 1975, the Hazardous Materials Regulations Board published a notice of proposed rulemaking, HM-124; Notice No. 75-2, in the FEDERAL REGISTER (40 FR 13316) which would permit the use of bottom outlet valves without sheer sections on MC 312 cargo tanks if protection for the valves is provided by suitable guards capable of absorbing a concentrated horizontal force of at least 8,000 pounds.

A number of commenters suggested that the proposed alternate method be revised to require that the bottom outlet valves be located in the protective envelope provided by the suspension subassembly of the cargo tanks. The Bureau believes it overly restrictive to allow the suspension subassembly to serve as the only alternate to a shear section. As proposed, § 178.343-5(b)(1)(ii) will permit the suspension sub-assembly or any other method which will meet the strength criteria to serve as valve protection. For this reason, § 178.343-5(b)(1)(ii) remains as proposed in the notice.

One commenter agreed that bottom outlet valve protection can be provided by the use of guards; however, it was suggested that the guards provide protection at least equivalent to that afforded top outlets for overturn protection. The Bureau does not have data available at this time to prescribe strength requirements for guards on MC 312 cargo tanks other than those that are presently presented for the MC 306 and MC 307 cargo tanks (see 49 CFR 178.340-8(d)(1)(ii). In addition, the Bureau is not aware of any data that would indicate that the present requirements are not adequate. Therefore, the strength criteria of guard protection for bottom outlet valves on MC 312 cargo tanks will remain as proposed.

Another commenter pointed out that the word "emergency" is not used in the present wording of § 178.343-5(b)(1). It is recognized that this section deals with bottom outlet product piping and not necessarily emergency valve piping. Therefore, the word "emergency" is deleted from the proposed regulations.

In consideration of the foregoing, § 178.343-5 of Title 49, Code of Federal Regulations is amended by revising paragraphs (b)(1) and (b)(1)(i), and by adding paragraph (b)(1)(ii) to read as follows:

§ 178.343-5 Outlets.

* * * * *

(b) * * *

(1) Product piping must be protected in such a manner as to reasonably assure against the accidental escape of contents. Such protection must be provided by:

(i) A shear section located out-board of each valve seat and within 4 inches of the vessel which will break under strain and leave the valve seat and its attachment to the vessel and the valve head intact and capable of retaining product. The shear section shall be machined in such a manner as to abruptly reduce the wall thickness of the adjacent piping (or valve) material by at least 20 percent; or

(ii) By suitable guards capable of absorbing a concentrated horizontal force of at least 8,000 pounds applied from any horizontal direction, without damage to the discharge piping which will adversely affect the product retention integrity of the discharge valve.

* * * * *

(18 U.S.C. 834; 49 CFR 1.53(g))

Effective: March 31, 1976. However, immediate compliance with the regulations as amended herein is authorized.

Issued in Washington, D.C., on January 21, 1976.

JAMES T. CURTIS, Jr.,
Director,
Materials Transportation Bureau.

[FR Doc.76-2235 Filed 1-26-76;8:45 am]

[Docket No. HM-100; Amdt. No. 179-14A]

PART 179—SPECIFICATIONS FOR TANK CARS

Ethylene Oxide; Opening in Tank Car Heads

The purpose of this amendment to Part 179 of Title 49, Code of Federal Regulations, is to extend the date for compliance by affected persons with the construction requirements of § 179.102-12 (a)(2) and (a)(7) as they apply to tank cars built before January 31, 1975.

By Amendment No. 179-14 under Docket No. HM-100 (39 FR 24909, July 8, 1974), the Hazardous Materials Regulations Board provided among other things that each tank car used to transport ethylene oxide must be constructed in compliance with the requirements of

§ 179.102–12 (a)(2) and (a)(7) after January 31, 1975, except that tank cars which are not in compliance and were built before January 31, 1975, must be in compliance with those requirements by January 31, 1976.

Two petitioners have requested the Materials Transportation Bureau to extend the January 31, 1976 compliance date due to unforeseen delays caused for example by unavailability of materials, that have prevented the modifications required by § 179.102–12 (a)(2) and (a)(7) to all specification 105A100W tank cars currently in ethylene oxide service.

One petitioner pointed out that unlike the January 31, 1976 compliance date for specification 105A100W tank cars, the compliance date specified for 111A100W4 tank cars is July 31, 1976 (see § 179.202–18(a)(2) and (a)(7), 39 FR 24909, July 8, 1974). In light of that difference and because the Bureau believes that the delays in meeting the January 31, 1976 compliance date were unavoidable, compliance with the provisions of § 179.102–12(a)(2) and (a)(7) for specification 105A100W tank cars built before January 31, 1975 will be extended.

Since this amendment provides the immediate relief necessary to avoid noncompliance with a not yet effective regulation, notice and public procedure thereon is impracticable and because this amendment imposes no additional burden on the persons affected, it may be made effective in less than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, paragraphs (a)(2) and (a)(7) of § 179.102–12 of Title 49, Code of Federal Regulations, are amended by changing the date "January 31, 1976" therein to read "July 31, 1976".

(18 U.S.C. 831–835; 49 CFR 1.53(g))

Effective date. This amendment is effective on January 27, 1976.

Issued in Washington, D.C., on January 22, 1976.

JAMES T. CURTIS, Jr.,
Director,
Materials Transportation Bureau.

[FR Doc.76–2363 Filed 1–26–76;8:45 am]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76–3; Notice 1]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

New Pneumatic Tires for Passenger Cars

This amendment adds certain tire size designations to 49 CFR 571.109 (Federal Motor Vehicle Safety Standard No. 109).

Guidelines were published in the FEDERAL REGISTER on October 5, 1968 (33 FR 14964), and amended August 31, 1974 (39 FR 28980), specifying procedures by which routine additions could be made to Appendix A, § 571.109. Under these guidelines the additions become effective 30 days from publication in the FEDERAL REGISTER, if no objections are received. If objections are received, rulemaking procedures for the issuance of motor vehicle safety standards (49 CFR Part 553) are followed.

Accordingly, Appendix A of 49 CFR § 571.109 is amended, subject to the 30-day provision indicated above, as specified below.

Effective date: February 23, 1976, if objections are not received.

The following changes are made to Appendix A of § 571.109, Standard No. 109; *New Pneumatic Tires:*

Amendments requested by the European Tyre and Rim Technical Organization:

§ 571.109 [Appendix amended]

A. In Table I–N, the following new tire size designation and corresponding values are added.

TABLE I–N.—*Tire load ratings, test rims, minimum size factors, and section widths for "70 Series" radial ply tires*

Tire size designation [1]	Maximum tire loads, (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width [2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
155/70R13	630	650	665	685	705	725	740	760	780	800	820	835	855	4	27.17	5.03

[1] The letters "H," "S" or "V" may be included in any tire size designation adjacent to the "R."
[2] Actual section width and overall width shall not exceed the specified section width by more than 7 percent.

B. In Table I–S, the following new tire size designation and corresponding values are added.

TABLE I–S.—*Tire load ratings, test rims, minimum size factors, and section widths for "60 Series" radial ply tires*

Tire size designation [1]	Maximum tire loads, (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width [2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
235/60R13	950	1,010	1,070	1,130	1,190	1,240	1,300	1,350	1,400	1,440	1,490	1,540	1,580	6	32.81	9.05

[1] The letters "H," "S" or "V" may be included in any tire size designation adjacent to the "R."
[2] Actual section width and overall width shall not exceed the specified section width by more than 7 percent.

C. In Table I–X, the following new tire size designations and corresponding values are added.

TABLE I–X.—*Tire load ratings, test rims, minimum size factors, and section widths for "50 Series" radial ply tires*

Tire size designation [1]	Maximum tire loads, (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width [2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
195/50R15	650	690	730	770	810	850	890	920	955	990	1,020	1,050	1,080	6	30.16	7.91
225/50R16	880	940	1,000	1,060	1,110	1,160	1,210	1,255	1,300	1,345	1,390	1,435	1,475	6½	33.34	8.98

[1] The letters "H," "S" or "V" may be included in any tire size designation adjacent to the "R".
[2] Actual section width and overall width shall not exceed the specified section width by more than 7 percent.

D. A new Table I-DD, "55 Series" Radial Ply Tires, incorporating the following new tire size designation and corresponding values, is added.

TABLE I-DD.—*Tire load ratings, test rims, minimum size factors, and section widths for "55 Series" radial ply tires*

Tire size designation [1]	Maximum tire loads (pounds), at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width [2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
205/55R16	780	840	890	930	980	1,030	1,070	1,110	1,150	1,190	1,230	1,270	1,300	6	22.57	8.19

[1] The letters "H," "S" or "V" may be included in any tire size designation adjacent to the "R".
[2] Actual section width and overall width shall not exceed the specified section width by more than 7 percent.

E. A new Table I-EE, "45 Series" Radial Ply Tires, incorporating the following new tire size designation and corresponding values, is added.

TABLE I-EE.—*Tire load ratings, test rims, minimum size factors, and section widths for "45 Series" radial ply tires*

Tire size designation [1]	Maximum tire loads, (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width [2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
235/45R15	780	840	890	930	980	1,030	1,070	1,110	1,150	1,190	1,230	1,270	1,300	8	22.11	9.29

[1] The letters "H," "S" or "V" may be included in any tire size designation adjacent to the "R."
[2] Actual section width and overall width shall not exceed the specified section width by more than 7 percent.

(Sec. 103, 119, 201 and 202, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, 1421 and 1422); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 20, 1976.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.76-2086 Filed 1-26-76;8:45 am]

[Docket No. 75-3; Notice 2]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

School Bus Emergency Exit Requirements

This notice amends Federal Motor Vehicle Safety Standard No. 217, *Bus Window Retention and Release*, 49 CFR 571.217, to specify requirements for emergency doors for school buses pursuant to the provisions of section 202 of the Motor Vehicle and Schoolbus Safety Amendments of 1974 (Pub. L. 93-492, 88 Stat. 1484; 15 U.S.C. 1392). It responds to the congressional mandate to establish standards concerning school bus emergency exits (15 U.S.C. 1392(i)(1)(A)(i)).

Section 202 requires that certain school bus safety standards be published within 15 months of the passage of the 1974 amendments on October 27, 1974. In addition, these statutory provisions remove the otherwise discretionary authority of the NHTSA to establish lead times for compliance under the general rule-making provisions of the National Traffic and Motor Vehicle Safety Act by specifying an effective date for the amendment of 9 months from the date of publication of this notice (15 U.S.C. 1392(i)(1)(B)). The proposed amendments upon which this notice is based were published on February 28, 1975 (40 FR 8569).

Many comments were received in response to the proposal to require either one rear emergency door or two side emergency doors in the rear half of the bus passenger compartment. Many objected that the proposal provided for too few emergency doors, and requested requirements for additional side doors and roof exits. Some commenters suggested that push-out windows and the "California" rear exit be required. The agency does not discourage the inclusion of additional emergency exits in school buses so long as they comply with the requirements applicable to non-school bus emergency exits. The NHTSA believes that "California" rear window emergency exits may be preferable in certain circumstances and proposes in this issue of the FEDERAL REGISTER to amend this rule to permit the use of the "California" rear window along with a side door emergency exit in place of the rear door emergency exit. In the alternative, it is proposed to allow this option only on rear-engine powered school buses. Under either proposal the requirements of the standard would not be met by providing two side door emergency exits. In addition, the subject of roof exists is being considered and could be the subject of future rulemaking. However, roof exit requirements cannot be included in this rulemaking action because of the statutorily imposed deadline on promulgation of these amendments.

A number of comments were received opposing the proposed interlock requirement on the ground that it would prevent restarting the engine after the school bus stalls in a dangerous intersection or a railroad crossing and panicky passengers jam the release mechanism. The intent of this requirement is to prevent the initial starting of the bus engine until the doors have been unlocked, by a key, combination, or the operation of a remote switch at the beginning of the day. The deletion of the phrase "or otherwise inoperable" excludes inadvertent jamming of the door release mechanism from the requirement. The word "locked" has been defined for this purpose as not releasable at the door except by a key or combination. It would include doors openable by a remote switch.

Six comments supported the proposal to require an audible alarm when the ignition is on and the release mechanism of any emergency door is not closed. Five of these, however, objected that an alarm at each door in addition to one in the driver's compartment would be unnecessary and unduly costly. The NHTSA does not agree. The purpose of audible alarms at each door is to indicate which release mechanism is not closed. This is especially critical while the vehicle is in motion, as it will serve to warn the passengers in the area of the possibility that an emergency door could open. In addition, it will serve as a deterrent to tampering by children with the emergency door release mechanisms. Therefore, the requirement that an audible alarm be positioned at each emergency door and at the driver's position has been retained.

Objections were received to the requirement that the magnitude of force required to activate the emergency door release mechanism be not more than 40 pounds. The NHTSA does not consider that the 40 pound force limit is too high in light of the location and access requirements of this standard. If the maxi-

mum force level were substantially lowered, there would be a significant likelihood that emergency door release mechanisms would be inadvertently activated by a passenger.

In addition, the NHTSA has noted the possibility of ambiguity with respect to the wording of paragraph S5.4 of the old standard and S5.4.2 of the proposal. The intent of these paragraphs is to specify conditions applicable to the opening of the exit after the release mechanism has been activated. Accordingly, the wording of the two paragraphs has been modified to clearly reflect this intent.

Many school districts and manufacturers objected to the parallelepiped clearance requirement for the emergency doors because of the number of seats that would be eliminated and the costs of redesigning van-type school buses to meet the clearance requirements. In addition, many commenters pointed out that the 12-inch aisle in most school buses precludes effective use of a large exit meeting the proposed requirements.

The NHTSA has determined that these arguments have merit. As a result, the proposed parallelepiped requirements have been modified by reducing the height from 48 inches to 45 inches, reducing the depth from 24 to 12 inches for rear exits in buses over 10,000 lbs GVWR, and to 6 inches for rear exits in buses under 10,000 lbs GVWR. For side exits the depth has been eliminated altogether. Additionally, the forward edge of the side door now coincides with a vertical transverse plane tangent to the rearmost point of the adjacent seat, thus permitting simultaneous exiting of two occupants, between the seat backs and over the seat cushion.

In light of the above, 49 CFR 571.217, *Bus Window Retention and Release*, is amended as follows:

1. S5.2 is revised by the addition of the following sentence at the end of the paragraph:

"School buses shall provide openings for emergency exits that conform to S5.2.3."

2. S5.2.3 is revised to read:

S5.2.3 *School buses.*

S5.2.3.1 Each school bus shall provide, at the manufacturer's option, one emergency door on each side in the rear half of the bus passenger compartment, or one rear emergency door. Each door shall open outward. A rear emergency door shall be hinged on the right side. A side emergency door shall be hinged on its forward side. Any emergency exit provided in addition to those required by this paragraph shall meet the requirements specified in paragraphs S5.3 through S5.5.

S5.2.3.2 The engine starting system of a school bus shall not operate if any emergency exit is locked from either inside or outside the bus. For purposes of this requirement, "locked" means that the release mechanism cannot be activated by a person at the door without a special device such as a key or special information such as a combination.

3. S5.3.1 is revised to read:

S5.3.1 Each push-out window or other emergency exit not required by S5.2.3 shall be releasable by operating one or two mechanisms located within the regions specified in Figure 1, Figure 2, or Figure 3. The lower edge of the region in Figure 1, and Region B in Figure 2, shall be located 5 inches above the adjacent seat, or 2 inches above the armrest, if any, whichever is higher.

4. S5.3.2 is revised by amending the first sentence to read:

"When tested under the conditions of S6, both before and after the window retention test required by S5.1, each emergency exit not required by S5.2.3 shall allow manual release of the exit by a single occupant using force applications each of which conforms, at the option of the manufacturer, either to (a) or (b).

5. A new S5.3.3 is added to read:

S5.3.3 When tested under the conditions of S6., both before and after the window retention test required by S5.1, each school bus emergency door shall allow manual release of the door by a single person, from both inside and outside the bus passenger compartment, using a force application that conforms to paragraphs (a) through (c). Each release mechanism shall operate without the use of remote controls or tools, and notwithstanding any failure of the vehicle's power system. When the release mechanism is not in the closed position and the vehicle ignition is in the "on" position, a continuous warning sound shall be audible at the driver's seating position and in the vicinity of the emergency door having the unclosed mechanism.

(a) Location: Within the high force access region shown in Figure 3A for a side emergency door, and in Figure 3D for a rear emergency door.

(b) Type of motion: Upward from inside the bus; at the discretion of the manufacturer from outside the bus.

(c) Magnitude of force: Not more than 40 pounds.

6. The present S5.4 is renumbered S5.4.1, and the phrase "Each push-out window or other emergency exit shall, after the release mechanism has been operated," is replaced by the phrase "After the release mechanism has been operated, each push-out window or other emergency exit not required by S5.2.3," at the beginning of the paragraph.

7. A new S5.4.2 is added to read:

S5.4.2 *School Buses Over 10,000 Pounds GVWR.* (a) After the release mechanism has been operated, each school bus rear emergency door shall, under the conditions of S6., before and after the window retention test required by S5.1, using the force levels specified in S5.3.3, be manually extendable by a single person to a position that permits an opening large enough to permit unobstructed passage of a rectangular parallelepiped 45 inches high, 24 inches wide, and 12 inches deep, keeping the 45 inch dimension vertical, the 24 inch dimension parallel to the opening and the lower surface in contact with the floor of the bus at all times.

(b) After the release mechanism has been operated, each school bus side emergency door shall, under the conditions of S6., before and after the window retention test required by S5.1, using the force levels specified in S5.3.3, be manually extendable by a single person to a posiiton that permits an opening at least 45 inches high and 24 inches wide. A vertical transverse plane tangent to the rearmost point of a seat back shall pass through the forward edge of a side emergency door.

S5.4.2.1 *School Buses Less Than 10,000 Pounds GVWR.* School buses with a gross vehicle weight rating (GVWR) less than 10,000 pounds shall conform to all the provisions of S5.4.2, except that the parallelepiped dimensions for the opening of the rear door or doors shall be 45 inches high, 24 inches wide, and 6 inches deep.

7. S5.5.1 and S5.5.2 are revised by adding "In buses other than school buses," before the text of both paragraphs, and a new S5.5.3 is added to read:

S.5.5.3 *School buses.* Each school bus emergency door shall have the designation "Emergency Door" in letters at least 2 inches high, of a color that contrasts with its background, located at the top of or directly above the emergency door on both the inside and outside surfaces of the bus. An arrow at least 6 inches in length and at least ¾-inch in width, of a color that contrasts with its background, indicating the direction in which the release mechanism should be operated to open the emergency door, shall be located within 6 inches of the release mechanism on the inside of the door.

Effective date: October 26, 1976.

(Sec. 103, 112, 119, Pub. L. 89-563, 80 Stat. 718; sec. 202, Pub. L. 93-492, 88 Stat. 1484 (15 U.S.C. 1392, 1401, 1407); delegation of authority at 49 CFR 1.50)

Issued on January 22, 1976.

HOWARD J. DUGOFF,
Acting Administrator.

[FR Doc.76-2275 Filed 1-26-76;8:45 am]

[Docket No. 73-34; Notice 3]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

School Bus Body Joint Strength

This notice establishes a new motor vehicle safety standard, No. 221, *School Bus Body Joint Strength*, 49 CFR 571.221, specifying a minimum performance level for school bus body panel joints.

The Motor Vehicle and Schoolbus Safety Amendments of 1974 (Pub. L. 93-492, 88 Stat. 1470, herein, the Act) require the issuance of minimum requirements for school bus body and frame crashworthiness. This rulemaking is pursuant to authority vested in the Secretary of Transportation by the Act and delegated to the Administrator of the NHTSA, and is preceded by notices of proposed rulemaking issued January 29, 1974 (39 FR 2490) and March 13, 1975 (40 FR 11738).

One of the significant injury-producing characteristics of school bus accidents, exposure to sharp metal edges, occurs when body panels become separated from the structural components to which they have been fastened. In the accident severe lacerations may result if the occupants of the bus are tossed against these edges. Moreover, if panel separation is great the occupant may be ejected from the vehicle, greatly increasing the possibly of serious injury.

This standard is intended to lessen the likelihood of these modes of injury by requiring that body joints on school buses have a tensile strength equal to 60 percent of the tensile strength of the weakest joined body panel, as suggested by the Vehicle Equipment Safety Commission (VESC). The NHTSA has determined that this is an appropriate level of performance for body joints and that its application to school buses is both reasonable and practicable. Furthermore, the NHTSA believes that adoption of this standard will provide an effective and meaningful solution to the body panel problem.

It is anticipated that this rule will burden manufacturers only to the extent of requiring the installation of more rivets than are currently used. The NHTSA has reviewed the economic and environmental impact of this proposal and determined that neither will be significant.

In their response to the two NHTSA proposals on this subject, several of the commenters suggested that the standard could be met by reducing the strength of the panel rather than increasing the strength of the joint, and that a minimum joint strength should be required. For several reasons the NHTSA does not believe that a minimum absolute joint strength is desirable at this time. While this standard will tend to increase the overall strength of buses, it is not designed to set minimum body panel strength requirements. Its purpose is to prevent panels from separating at the joint in the event of an accident. In order to deal with the problem of laceration, this regulation must be applicable to both exterior and interior joints. An absolute minimum joint strength requirement would be constrained by the level of performance appropriate for the relatively thin interior panels. Thus, the overall level of performance could not be defined in a meaningful fashion without severely and unnecessarily limiting the manufacturer's flexibility in designing his product. The NHTSA School Bus Rollover Protection Standard (49 CFR 571.220), which specifies requirements for the structural integrity of school bus bodies, should result in a practical lower limit on panel strength and thereby set a practical absolute minimum joint strength.

The NHTSA has no evidence that the mode of failure found in the larger traditional school buses also occurs in smaller, van-type school buses currently manufactured by automobile manufacturers for use as 11- to 17-passenger school buses. Ford Motor Company commented that the mode of injury sought to be prevented by this standard does not occur in accidents involving school buses converted from multipurpose passenger vehicles (vans). Chrysler Corporation suggested that the proposed requirement is inappropriate when applied to vans with "coach" joint construction. Based on these comments, the NHTSA has determined that until information to the contrary appears or is developed these vehicles should not be covered by the requirement. Accordingly, the application of the standard has been limited to school buses with a gross vehicle weight rating over 10,000 pounds.

Several commenters suggested that certain types of joints might not be susceptible of testing in the manner specified in this regulation. Up to this time the NHTSA has not found sufficient evidence in support of that position to justify amending the standard. If information is received indicating that different test methods are required for certain applications, appropriate action will be initiated.

In consideration of the foregoing, a new motor vehicle safety standard, No. 221, *School Bus Body Joint Strength*, is added as § 571.221 of Part 571 of Title 49, Code of Federal Regulations, as set forth below.

Effective date: October 26, 1976.

The effective date of this standard is 9 months after the date of issuance, as required by the Motor Vehicle and Schoolbus Safety Amendments of 1974, Pub. L. 93-492, section 202 (15 U.S.C. 1397(i)(1)(A)).

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); section 202, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1392); delegation of authority at 49 CFR 1.50)

Issued on January 22, 1976.

HOWARD J. DUGOFF,
Acting Administrtaor.

§ 571.221 Standard No. 221, school bus body joint strength.

S1. *Scope.* This standard establishes requirements for the strength of the body panel joints in school bus bodies.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries resulting from the structural collapse of school bus bodies during crashes.

S3. *Application.* This standard applies to school buses with gross vehicle weight ratings of more than 10,000 pounds.

S4. *Definitions.* "Body component" means a part of a bus body made from a single piece of homogeneous material or from a single piece of composite material such as plywood.

"Body panel" means a body component used on the exterior or interior surface to enclose the bus' occupant space.

"Body panel joint" means the area of contact or close proximity between the edges of a body panel and another body component, excluding spaces designed for ventilation or another functional purpose, and excluding doors, windows, and maintenance access panels.

"Bus body" means the portion of a bus that encloses the bus's occupant space, exclusive of the bumpers, the chassis frame, and any structure forward of the forwardmost point of the windshield mounting.

S5. *Requirement.* When tested in accordance with the procedure of S6, each body panel joint shall be capable of holding the body panel to the member to which it is joined when subjected to a force of 60% of the tensile strength of the weakest joined body panel determined pursuant to S6.2.

S6. *Procedure.*

S6.1 *Preparation of the test specimen.*

S6.1.1 If a body panel joint is 8 inches long or longer, cut a test specimen that consists of any randomly selected 8-inch segment of the joint, together with a portion of the bus body whose dimensions, to the extent permitted by the size of the joined parts, are those specified in Figure 1, so that the specimen's centerline is perpendicular to the joint at the midpoint of the joint segment. Where the body panel joint is not fastened continuously, select the segment so that it does not bisect a spot weld or a discrete fastener.

S6.12 If a joint is less than 8 inches long, cut a test specimen with enough of the adjacent material to permit it to be held in the tension testing machine specified in S6.3.

S6.1.3 Prepare the test specimen in accordance with the preparation procedures specified in the 1973 edition of the Annual Book of ASTM Standards, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

S6.2 *Determination of minimum allowable strength.* For purposes of determining the minimum allowable joint strength, determine the tensile strengths of the joined body components as follows:

(a) If the mechanical properties of a material are specified by the American Society for Testing and Materials, the relative tensile strength for such a material is the minimum tensile strength specified for that material in the 1973 edition of the Annual Book of ASTM Standards.

(b) If the mechanical properties of a material are not specified by the American Society for Testing and Materials, determine its tensile strength by cutting a specimen from the bus body outside the area of the joint and by testing it in accordance with S6.3.

S6.3 *Strength test.*

S6.3.1 Grip the joint specimen on opposite sides of the joint in a tension testing machine calibrated in accordance with Method E4, Verification of Testing Machines, of the American Society for Testing and Materials (1973 Annual Book of ASTM Standards).

S6.3.2 Adjust the testing machine grips so that the joint, under load, will be in stress approximately perpendicular to the joint.

S6.3.3 Apply a tensile force to the specimen by separating the heads of the

testing machine at any uniform rate not less than ⅛ inch and not more than ⅜ inch per minute until the specimen separates.

[FR Doc.76-2276 Filed 1-26-76;8:45 am]

[Docket No. 75-2; Notice 02]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

School Bus Rollover Protection

This notice establishes a new motor vehicle safety Standard No. 220, *School Bus Rollover Protection*, 49 CFR 571.220, specifying perform nce requirements for the structural integrity of the passenger compartment of school buses when subjected to forces that can be encountered in rollovers.

The Motor Vehicle and Schoolbus Safety Amendments of 1974 (the Act) mandate the issuance of Federal motor vehicle safety standards for several aspects of school bus performance, including crashworthiness of the vehicle body and frame. Pub. L. 93-492, section 202 (15 U.S.C. 1392(i) (1) (A)). Based on this mandate and on bus body crashworthiness research (DOT-HS-046-3-694), the NHTSA proposed rollover protection requirements for school buses (40 FR 8570, February 28, 1975). Citing statistics on the safety record of school bus operation, several manufacturers questioned whether any standard for school bus rollover protection could be justified.

The Act reflects a need, evidenced in correspondence to the NHTSA from the public, to protect the children who ride in school buses. They and their parents have little direct control over the types of vehicles in which they ride to school, and are not in a position to determine the safety of the vehicles. It is for this reason that the school bus standards must be effective and meaningful.

At the same time, the safety history of school buses does not demonstrate that radical modification of school bus structure would substantially decrease occupant death and injury. As noted in the "School Bus Safety Improvement Program" contract conducted by Ultrasystems, Inc. (DOT-HS-046-3-694), for the NHTSA:

> School buses are a relatively safe mode of human transportation. School bus accident rates and injury/fatality rates on a per-vehicle, per-vehicle-mile, per-passenger-mile, or per-passenger basis are significantly less than for other passenger vehicles. Accidents to school children while enroute to and from school occur primarily in modes other than as school bus passengers. However, school bus safety can and should be improved.

As a practical matter, the amount of structural modification called for in this standard is also limited as a result of the 9-month lead time available to implement the provisions of each school bus standard after its promulgation. The various new requirements imposed in response to the mandate of the Act will require considerable effort by school bus manufacturers to bring their products into conformity in the 9-month period.

The Physicians for Automotive Safety, The National Transportation Safety Board, the Home Insurance Company and other commenters suggested that the NHTSA had ignored the recommendations of the report submitted by Ultrasystems on school bus improvement. The report concluded that the improved school bus design tested by Ultrasystems could withstand a significantly greater load for the same amount of roof crush than existing school bus designs.

In fact, the NHTSA evaluated the test results and Ultrasystem's recommendations carefully. While the percentage of reduction of roof crush would be substantial as a result of the recommended design change, no relationship of this decrease in deflection to improved safety for occupants was established. Ultrasystems reported that increases of $500 in cost and 530 pounds were incurred to achieve several improvements, including those of the vertical roof crush test.

The recommendations also implied increased structural rigidity but did not evaluate its effect on the amount of energy absorbed by vehicle occupants in a crash. Also, Ultrasystems did not consider the problems of lead time and retooling costs in making its recommendations. The NHTSA continues to consider that its proposal of 5½ inches of maximum roof crush under a load equal to 1½ times the vehicle's unloaded weight provides a satisfactory level of occupant crash protection. Available data do not support the conclusion that a 2- or 3-inch reduction of this crush would significantly improve the level of passenger safety in school buses. It is the intention of the NHTSA to continually review accident statistics relating to school bus safety. Accordingly, future upgrading of the standard will be considered should such action be warranted based upon availability of appropriate data.

In response to inquiries from the Motor Vehicle Manufacturers Association and General Motors as to the origin of the 5⅛-inch requirement, the limit is drawn from the existing School Bus Manufacturers Institute requirement for school bus structural integrity (Static Load Test Code for School Bus Body Structure, issued by the School Bus Manufacturers Institute).

In adopting the 5⅛-inch limit found in the present industry standard, the NHTSA is not merely preserving the status quo. While a manufacturer may have designed its products to meet the industry standard in the past, certain of its products presumably performed either better or worse than the nominal design. Conformity to NHTSA standards, in contrast, requires that every vehicle be capable of meeting the 5⅛-inch limit. This means that the manufacturer must design its vehicles to meet a higher level of performance, to provide a compliance margin for those of its products which fall below the nominal design level. Of course, the manufacturer can reduce the compliance-margin problem without redesign by improving the consistency of its manufacturing processes.

The standard requires that, upon the application of vertical downward force to the bus roof equal to 1½ times the vehicle's unloaded weight, the vehicle roof shall not crush more than 5⅛ inches, and the emergency exits shall be capable of being opened, with the weight applied, and after its release. The National Transportation Safety Board, the Vehicle Equipment Safety Commission (VESC), Mercedes-Benz, and the Action for Child Transportation Safety organization suggested other methods for evaluation of crashworthiness. The NHTSA has considered these, but concludes that the static test specified in this standard provides a reasonable means to determine crashworthiness without unnecessary testing expense.

Based on submitted comments, the standard varies in some respects from the proposal. The sizes of the force application plates used to apply force and the method of application have been revised to simplify the test procedures and equipment, and to spread the force over larger areas of the vehicle roofs of large and small vehicles. The proposal specified a rigid, rectangular force application plate 36 inches wide and 20 inches shorter than the vehicle roof, preventing reliance on the roof end structures for rollover protection in typical body-on-chassis construction. Commenters pointed out that the end structures of the roof are almost certain to bear the weight of a rollover and should be included in a test of a vehicle's crashworthiness. Several manufacturers and other commenters recommended an increase in the size of the force application plate, in order to permit the foremost and rearmost roof "bows" of their buses to absorb a portion of the test load. Ford Motor Company stated it had performed the test as proposed and asserted that the roof of its van-type vehicle as presently designed could not meet the requirement without an increase in the size of the force application plate to distribute the load over the entire vehicle roof. Chrysler Corporation stated it would find it necessary to discontinue production of small school buses because of redesign costs if the requirements were adopted as proposed.

With a view to the safety record of school buses and the 9-month lead time, the NHTSA concludes that the force application plate can be modified so that an additional "bow" or "bows" bear part of the applied force. It is the NHTSA's view that a change to permit both roof end structures to fully contribute to support of the applied force in the case of buses of more than 10,000 pounds would be a relaxation of current industry practices. Accordingly, the extent of change recommended by the industry is not adopted. The NHTSA concludes that an 8-inch increase in the length of the force application plate is sufficient to allow some portion of the applied force to be absorbed by the end bows of the roof while maintaining adequate crash protection. Therefore, for these buses the width of the plate remains as proposed

while the length of the plate is increased 8 inches.

In the case of lighter buses, which are generally of the van type, the NHTSA has increased both the width and length of the plate to encompass the entire roof.

The procedure for applying force through the plate has also been modified in some respects. Many comments objected that the procedure required an expensive, complex hydraulic mechanism that would increase the costs of compliance without justification. The proposal specified an "evenly-distributed vertical force in a downward direction through the force application plate", starting with the plate horizontal. Commenters interpreted these specifications to mean that the vehicle would be required to absorb the energy in evenly-distributed fashion and that the horizontal altitude of the plate must be maintained.

Actually these specifications were included in the proposed method to advise manufacturers of the precise procedures to be employed in compliance testing of their products. Understanding that some manufacturers may choose to achieve the required force application by applying weights evenly over the surface of the plate, the standard specified an "evenly-distributed force" to eliminate other methods (such as a concentrated force at one end of the plate) that could unfairly test the vehicle structure. The horizontal attitude of the plate was also intended to establish a beginning point for testing on which a manufacturer can rely. While these specifications establish the exact circumstances under which vehicles can be tested, a manufacturer can depart from them as long as it can be shown that the vehicle would comply if tested exactly as specified. In place of the perfectly rigid plate called for in the standard, for example, a manufacturer could employ a plate of sufficient stiffness to ensure that the test results are not affected by the lack of rigidity.

Some modification of the test procedures has been made for simplification and clarity. To permit placement of the plate on the roof to begin testing without a suspension mechanism, the specification for horizontal attitude is modified to permit the plate to depart from the horizontal in the fore and aft direction only. Some manufacturers considered the initial application of force as an unnecessary complication. However, the initial force application of 500 pounds has been retained in order to permit elimination of inconsequential deformation of the roof structure prior to measurement of the permissible 5⅛ inches of deflection. In instances where the force application plate weighs more than 500 pounds, some type of suspension mechanism could be used temporarily to constrain the load level to the initial value, if the manufacturer decides to conduct his testing exactly as specified in the standard's procedures.

The requirement that force be applied "through the plate" has been changed to "to the plate" in order to avoid a misunderstanding that the vehicle must absorb energy evenly over the surface of its roof.

As proposed by several commenters, the rate of application in pounds per minute has been changed to inches per second, specifically "at any rate not more than ½ inch per second." Manufacturers should understand that "any" in this context is defined by the NHTSA (49 CFR 571.4) to mean that the vehicle roof must satisfy the requirement at every rate of application within the stated range. General Motors reports that as a practical matter, the effect of speed in rate of application for tests of this nature is not significant in the range of 0.12 inches per second to 1 inch per second.

The requirement that movement "at any point" on the plate not exceed 5⅛ inches has not been modified despite some objections. The NHTSA considers it reasonable that excessive crush not be permitted at the extremities of the plate. Measurement of movement only at the center of the plate, for example, would permit total collapse of the structure in any direction as long as one point on the bus maintained its integrity.

The preparation of the vehicle for the application of force has been modified to specify replacement of non-rigid body mounts with equivalent rigid mounts. The compression of deformable body mounts is unrelated to crashworthiness of the structure and can therefore be eliminated to permit testing of the structure itself.

Accessories or components which extend upward from the vehicle's roof (such as school bus lights) are removed for test purposes. It is also noted that the vehicle's transverse frame members or body sills are supported for test purposes. In response to a question from Blue Bird Body Company, a frame simulator may be used along with any other variations as long as the manufacturer assures himself that the vehicle would conform if tested precisely as specified in the standard.

The vehicle's emergency exits must also be capable of opening when the required force is applied, and following release of the force. As noted in comments, this requirement simulates the use of the exits after a rollover, whether or not the vehicle comes to rest on its roof. The proposed requirement of ability to close these exits is eliminated because such a capability is unnecessary in an emergency evacuation of the bus. For this reason, the requirement has been modified so that a particular test specimen (i.e., a particular bus) will not be required to meet requirements for emergency exits which open following release of force, if the exits have already been tested while the application force is maintained.

With regard to the requirements as a whole, Crown Coach and other manufacturers argued that the application of 1½ times the vehicle's unloaded weight unfairly discriminates against buses with a higher vehicle weight-to-passenger ratio. The NHTSA disagrees, and notes that the relevant consideration in rollover is the weight of the vehicle itself in determining the energy to be absorbed by the structure. In a related area, one manufacturer suggested that the increased weight of the NHTSA's contemplated new standards for school buses would increase unloaded vehicle weight to the point where redesign would be required to meet the rollover standard. The NHTSA has considered this issue and estimates that the only significant new weight would be for improved seating. This weight increase would not substantially increase the severity of the rollover standard.

The State of California suggested consolidation of the rollover standard with the joint strength standard. While such a consolidation would appear logical for school buses alone, the NHTSA prefers the flexibility of separate standards with a view to their use independently in the future for other vehicle types. For example, the application of vertical force to the vehicle structure may be appropriate in a vehicle for which the joint strength requirement would not be appropriate.

The State of Georgia requested that transit systems transporting school children be exempted from Standard No. 220. This commenter apparently misunderstood the applicability of the standard. It only applies to newly-manufactured vehicles and does not require modification of existing fleets, whether or not operated by a transit authority.

Interested persons should note that the NHTSA has issued a proposal to modify the definition of "school bus" (40 FR 40854, September 1, 1975) and that if that definition is adopted the requirements of this standard will apply to all vehicles that fall within the definition, whether or not they fall within the present definition.

In consideration of the foregoing, a new motor vehicle safety standard No. 220, *School Bus Rollover Protection*, is added as § 571.220 of Part 571 of Title 49, Code of Federal Regulations, as set forth below.

Effective date: October 26, 1976.

The effective date of this standard is established as 9 months after the date of its issuance, as required by the Motor Vehicle and Schoolbus Safety Amendments of 1974, Pub. L. 93-492, section 202 (15 U.S.C. 1397(i)(1)(A)).

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); section 202, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1392); delegation of authority at 49 CFR 1.51)

Issued on January 22, 1976.

HOWARD J. DUGOFF,
Acting Administrator.

§ 571.220 Standard No. 220; school bus rollover protection.

S1. *Scope.* This standard establishes performance requirements for school bus rollover protection.

S2. *Purpose.* The purpose of this standard is to reduce the number of deaths and the severity of injuries that result from failure of the school bus body structure to withstand forces encountered in rollover crashes.

S3. *Applicability.* This standard applies to school buses.

S4. *Requirements.* When a force equal to 1½ times the unloaded vehicle weight is applied to the roof of the vehicle's body structure through a force application plate as specified in S5., Test procedures—

(a) The downward vertical movement at any point on the application plate shall not exceed 5⅛ inches; and

(b) Each emergency exit of the vehicle provided in accordance with Standard No. 217 (§ 571.217) shall be capable of opening as specified in that standard during the full application of the force, and after release of the force. A particular vehicle (i.e., test specimen) need not meet the emergency exit opening requirement after release of force if it is subjected to the emergency exit opening requirements during the full application of the force.

S5. *Test procedures.* Each vehicle shall be capable of meeting the requirements of S4. when tested in accordance with the procedures set forth below.

S5.1 With any non-rigid chassis-to-body mounts replaced with equivalent rigid mounts, place the vehicle on a rigid horizontal surface so that the vehicle is entirely supported by means of the vehicle frame. If the vehicle is constructed without a frame, place the vehicle on its body sills. Remove any components which extend upward from the vehicle roof.

S5.2 Use a flat, rigid, rectangular force application plate that is measured with respect to the vehicle roof longitudinal and lateral centerlines,

(a) In the case of a vehicle with a GVWR of more than 10,000 pounds, 12 inches shorter than the vehicle roof and 36 inches wide; and

(b) In the case of a vehicle with a GVWR of 10,000 pounds or less, 5 inches longer and 5 inches wider than the vehicle roof. For purposes of these measurements, the vehicle roof is that structure, seen in the top projected view, that coincides with the passenger and driver compartment of the vehicle.

S5.3 Position the force application plate on the vehicle roof so that its rigid surface is perpendicular to a vertical longitudinal plane and it contacts the roof at not less than two points, and so that, in the top projected view, its longitudinal centerline coincides with the longitudinal centerline of the vehicle, and its front and rear edges are an equal distance inside the front and rear edges of the vehicle roof at the centerline.

S5.4 Apply an evenly-distributed vertical force in the downward direction to the force application plate at any rate not more than 0.5 inch per second, until a force of 500 pounds has been applied.

S5.5 Apply additional vertical force in the downward direction to the force application plate at a rate of not more than 0.5 inch per second until the force specified in S4 has been applied, and maintain this application of force.

S5.6 Measure the downward movement of any point on the force application plate which occurred during the application of force in accordance with S5.5.

S5.7 To test the capability of the vehicle's emergency exits to open in accordance with S4(b)—

(a) In the case of testing under the full application of force, open the emergency exits as specified in S4(b) while maintaining the force applied in accordance with S5.4 and S5.5; and

(b) In the case of testing after the release of all force, release all downward force applied to the force application plate and open the emergency exits as specified in S4(b).

S6. *Test conditions.* The following conditions apply to the requirements specified in S4.

S6.1 *Temperature.* The ambient temperature is any level between 32° F. and 90° F.

S6.2 *Windows and doors.* Vehicle windows, doors, and emergency exits are in the fully-closed position, and latched but not locked.

[FR Doc.76-2274 Filed 1-26-76;8:45 am]

proposed rules

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 THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[27 CFR Parts 178, 181]

[Notice No. 289; Reference No. 287]

BLACK POWDER

Commerce in Firearms and Ammunition; and in Explosives; Extension of Comment Period

This notice extends the period for comments on the amended notice of proposed rulemaking, published December 22, 1975 (40 FR 59207), proposing regulations to implement Pub. L. 93-639, effective January 4, 1975. The legislation removed the exemption in 18 U.S.C. 845 (a) (5) on all black powder in quantities not exceeding five pounds. In lieu of the five pound exemption, the new law permits anyone to purchase and use commercially manufactured black powder in quantities of fifty pounds or less, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

A 30-day comment period, expiring January 21, 1976 was announced in the amended notice. As a result of Congressional interest in the proposed regulations, we are hereby extending the period for comments an additional 45 days to March 8, 1976. Interested persons felt that the 30-day period previously allowed was inadequate to permit many individuals, particularly antique firearms enthusiasts and experts in the field, to evaluate and respond to our new proposals. The proposals, unfortunately, were also published during the lengthy holiday season and notification of the amended proposed regulations did not reach many persons until well into the comment period.

The Bureau sincerely wants to consider all relevant data, views, and suggestions from the public before issuing final regulations on black powder. Due to the controversial nature of the proposals, we feel it is appropriate to extend the period for comments; therefore, the comment period is hereby extended to March 8, 1976.

Signed: January 22, 1976.

REX D. DAVIS,
Director.

[FR Doc.76-2421 Filed 1-23-76;12:24 pm]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 5400]

SALES OF FOREST PRODUCTS: GENERAL

Proposed Policy

The purpose of this amendment is to incorporate into the regulations the policy with regard to access to sales of timber limited to bidding by small business concerns as defined by the Small Business Administration in its regulations (13 CFR Part 121) under the authority of Section 15 of the Small Business Act of July 18, 1958 (72 Stat. 384).

The proposed amendment does not by itself change authorities or procedures which have an impact on the environment. It is hereby determined that the publication of this amendment is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2) (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2) (C) is required.

In accordance with the Department's policy on public participation in rulemaking (36 FR 8336) interested parties may submit written comments, suggestions, or objections with respect to the proposed rules to the Director (210), Bureau of Land Management, Washington, D.C. 20240 until February 19, 1976.

Subpart 5401 is hereby amended as follows:

1. Section 5401.0-6(a) is revised and amended by adding paragraph (b).

Subpart 5401—Advertised Sales: General

§ 5401.0-6 Policy.

(a) All sales other than those specified in § 5402.0-6 shall be made only after inviting competitive bids through publication and posting. Sales shall not be held sooner than one week after the last advertisement.

(b) No competitive sales shall be offered by the Authorized Officer unless there is access to the sale area which is available to anyone who is qualified to bid. Access to a set-aside sale shall be by one or a combination of the following: (1) Public roads; (2) roads owned and controlled by United States; (3) roads owned or controlled by a permittee of the United States subject to a Bureau right-of-way and road use permit or agreement when the permittee qualifies as a small business concern as defined by the Small Business Administration; (4) roads owned or controlled by a permittee of the United States who does not qualify as a small business concern as defined by the Small Business Administration when such roads are subject to a Bureau right-of-way and road use permit or agreement executed on or after July 18, 1958; (This includes any such permit or agreement executed on or after July 18, 1958, which supersedes a permit or agreement executed before July 18, 1958).

* * * * *

2. Section 5401.0-6(b) is amended by relettering paragraph (b) as paragraph (c).

JACK O. HORTON,
Assistant Secretary of the Interior.

JANUARY 16, 1976.

[FR Doc.76-2424 Filed 1-23-76;12:45 pm]

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Denial of Request for a Public Hearing

On October 1, 1975, the U.S. Fish and Wildlife Service (hereinafter, the Service) published a proposal (40 FR 45175) to add the Red Hill salamander to the list of endangered or threatened wildlife. In a letter dated November 20, 1975, Mr. William L. Dickinson requested an extension of the period for public comment on that proposal and, pursuant to section 4(f) (2) of the Endangered Species Act of 1973 (87 Stat. 884), requested the holding of public hearings on the proposal. Although the request for a public hearing was made beyond the 45 days specified in that section, the Service feels that the controversial nature of this proposal merits a reply in the FEDERAL REGISTER.

On January 13, 1976 (40 FR 1915) the Service announced the extension of the period for public comment through February 1, 1976. No public hearings are planned at this time. We are presently in contact with several agencies and other individuals to determine how we may best insure the continued survival of this unique animal while having minimal impact on other activities. Since the comment period has been extended until February 1, 1976, and in view of the continuing discussions, we do not feel that a public hearing is necessary at this time. Upon the closing of the extended comment period, if our analysis of the comments received indicates the

need for a public hearing in order to obtain additional views, a notice to that effect will be published in the FEDERAL REGISTER.

Dated: January 21, 1976.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

[FR Doc.76-2364 Filed 1-26-76;8:45 am]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 697]

[Administrative Order No. 642]

INDUSTRY COMMITTEE FOR INDUSTRIES IN AMERICAN SAMOA

Change in Date of Hearing

Administrative Order No. 640 for Special Industry Committee No. 12 for American Samoa (40 FR 44159) provides that the Committee is to commence its hearing on February 2, 1976.

As the result of contested elections in plants in the canning industry, the principal industry involved, the National Labor Relations Board is understood to be investigating the contested elections which investigations will be in January and February 1976. It is my concern that the investigations may substantially affect the industry committee process. The biennial period for the industry committee's review expires on June 30, 1976.

Realizing the possible adverse effects of the delay on the employees and employers, I, nevertheless feel that the greater equity would be served by not allowing the investigation by the National Labor Relations Board to interfere with the Industry Committee hearing. Accordingly, pursuant to the authority vested in me under section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004) and 29 CFR Part 511, I hereby postpone the date of the hearing of Special Industry Committee No. 12 until Monday, March 29, 1976, at 9:00 a.m. The date for the filing of prehearing statements is accordingly postponed to March 19, 1976.

Signed at Washington, D.C., this 23d day of January 1976.

JOHN T. DUNLOP,
Secretary of Labor.

[FR Doc.76-2507 Filed 1-26-76;10:05 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 76-CE-2-AD]

BEECH MODELS SERIES AIRPLANES

Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive (AD) applicable to Beech Models 99, 99A, A99A, B99, 100, A100, and 200 series airplanes.

There has been a gear-up landing incident involving a Beech Model 99 airplane which was attributed to a malfunction of the P/N MC-815AS-1 landing gear motor controller. The malfunction resulted when the relay contacts welded together and caused overheating and seizure of the motor armature which prevented emergency extension of the gear. The manufacturer has issued Beechcraft Service Instruction No. 0774-211 which recommends inspections of the landing gear motor controller to detect and correct conditions which could lead to this malfunction. Since this condition is likely to exist or develop in other aircraft of the same type design, an AD is being proposed, applicable to Beech Models 99, 99A, A99A, B99, 100, A100, and 200 series airplanes, making compliance with the Beechcraft Service Instruction mandatory.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Administration, Office of the Regional Counsel, 1558 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before February 26, 1976, will be considered before action is taken upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Airworthiness Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

BEECH. Applies to Models 99, 99A, A99A, and B99 (Serial Numbers U-1 and after, except those serial numbers with the 99-8010-1P hydraulic landing gear installation), Models 100, A100 (Serial Numbers B-1 and after) and Model 200 (Serial Numbers BB-2 and after) series airplanes.

Compliance: Require as indicated, unless already accomplished.

To reduce the probability of a malfunctioning P/N MC-815AS-1 landing gear motor controller which could result in loss of the auxiliary landing gear extension system, accomplish the following:

(A) Within 100 hours' time in service on those airplanes in which are installed landing gear motor controllers having 5,000 or more hours' time in service or prior to accumulation of 5,100 hours' time in service on those controllers having less than 5,000 hours' time in service and at each subsequent 1,000 hours' time in service thereafter on such landing gear motor controllers, inspect the P/N MC-815AS-1 landing gear motor controller in accordance with Beechcraft Service Instruction No. 0774-211 or later revisions. Repair or replace defective parts as necessary.

(B) Any alternate method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

Issued in Kansas City, Mo., on January 16, 1976.

GEORGE R. LACAILLE,
Acting Director, Central Region.

[FR Doc.76-2261 Filed 1-26-76;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 75-3; Notice 3]

SCHOOL BUS EMERGENCY EXIT REQUIREMENTS

Federal Motor Vehicle Safety Standards

This notice proposes amendments to Federal Motor Vehicle Safety Standard No. 217, *Bus Window Retention and Release* (49 CFR 571.217), to permit the use of a rear window emergency exit and a side door emergency exit as an optional means of compliance with the emergency exit requirements for school buses or, in the alternative, to permit this arrangement as an option only in rear-engine school buses, and to clarify the operating-instruction requirement for emergency exits.

By final rule published in this issue of the Federal Register the standard is amended to specify requirements for emergency doors pursuant to provisions of section 202 of the Motor Vehicle and Schoolbus Safety Amendments of 1974 (Pub. L. 93-492, 88 Stat. 1484, 15 U.S.C. 1392). These requirements include a provision for either a rear emergency door, or one emergency door on each side in the rear half of the bus passenger compartment, at the manufacturer's option. Several commenters to the rule suggested that a large push-out rear window better meets the need for safety than two side door emergency exits in certain circumstances, such as when a school bus overturns. The NHTSA believes this suggestion may have merit. It is proposed to allow school bus manufacturers the option of providing either (a) one rear door emergency exit or (b) one side door emergency exit and a push-out rear window emergency exit not less than 16 inches high and 48 inches wide. In the alternative it is proposed to allow this option only on rear-engine powered school buses. The provision of today's final rule allowing the option of two side door emergency exits would be deleted under either proposal.

The final rule issued today requires that operating instructions be placed near the emergency exits on all buses indicating the direction in which the release mechanism should be operated to open the door. Some persons believe that in an emergency a frightened passenger might not realize that the emergency exit opens outward and panic after attempting to open it inward. In order to address this problem and also to clarify the meaning of the term "operating instructions" it is proposed to amend the standard to require that the operating instructions describe the motions necessary to unlatch and open each emergency door.

In consideration of the foregoing, it is proposed that Federal Motor Vehicle

Safety Standard No. 217, *Bus Window Retention and Release* (49 CFR 571.217), be amended as follows:

1. Section 5.2.3.1 would be amended to read:

S5.2.3.1 Each school bus shall provide, at the manufacturer's option, the following minimum emergency exit provisions:

(a) One rear emergency door hinged on the right side and opening outward; or

(b) One emergency door on the left side in the rear half of the bus passenger compartment, and a push-out rear window that provides a minimum opening clearance 16 inches high and 48 inches wide. This window shall be releasable by a single mechanism located in the high force access region as shown in Figure 3C. Release and opening of the window shall require force applications, not to exceed 40 pounds, in the directions specified in S5.3.2.

ALTERNATIVE PROPOSAL

Option (b) would only be permitted in rear-engine powered school buses.

2. S5.5.1 would be amended to read:

S5.5.1 In buses other than school buses, each push-out window or other emergency exit shall have the designation "Emergency Exit" followed by concise operating instructions describing each motion necessary to unlatch and open the exit, located within 6 inches of the release mechanism.

Examples:

(1) Lift to Unlatch, Push to Open.
(2) Lift Handle and Push out to Open.

When a release mechanism is not located within an occupant space of an adjacent seat, a label meeting the requirements of S5.5.2 that indicates the location of the nearest release mechanism shall be placed within the occupant space.

Example: Emergency exit instructions located next to seat ahead.

3. S5.5.3 would be amended to read:

S.5.5.3 *School Bus.* Each school bus emergency exit provided in accordance with S5.2.3.1 shall have the designation "Emergency Door" or "Emergency Exit," as appropriate, in letters at least 2 inches high, of a color that contrasts with its background, located at the top of or directly above the emergency exit on both the inside and outside surfaces of the bus. Concise operating instructions describing the motions necessary to unlatch and open the emergency exit, in letters at least three-eighths of an inch high, of a color that contrasts with its background, shall be located within 6 inches of the release mechanism on the inside surface of the bus.

Example:

(1) Lift to Unlatch, Push to Open.
(2) Lift Handle, Push Out to Open.

Interested persons are invited to submit comments on these proposals. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Comment closing date: March 12, 1976.

Proposed effective date: October 26, 1976.

(Sec. 103, 112, 119, Pub. L. 89-563, 80 Stat. 718; Sec. 202, Pub. L. 93-492, 88 Stat. 1484 (15 U.S.C. 1392, 1401, 1407); delegations of authority at 49 CFR 1.50, 49 CFR 501.8).

Issued on January 23, 1976.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.76-2451 Filed 1-26-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 93]

[Docket No. 20685; FCC 76-15]

TAXICAB RADIO SERVICE

Acceptance of Applications and Allocations of Frequencies

In the matter of Amendment of Parts 2 and 93 for adoption of interim criteria to govern acceptance of applications in the Taxicab Radio Service for new stations in the New York City area. Allocations of the frequencies 152.465 and 157.725 MHz to the Taxicab Radio Service; Docket No. 20685.

1. The Commission has under consideration a petition (RM-2485) filed by the International Taxicab Association (ITA). ITA has requested the Commission to impose a moratorium (a freeze) on applications for radio station authorizations in the Taxicab Radio Service in the New York City area[1] and to make more spectrum available for taxicab radio operations.[2]

2. In the petition, ITA states that there is a "potential frequency congestion crisis" on taxicab channels in the New York City area and it argues that the "crisis" can only be averted by immediate Commission action to make more spectrum available and by the imposition of an interim "freeze" on most applications for new taxicab radio systems in the New York City area. It contends that the Commission's decisions in Docket 18262 do not offer the needed immediate relief and, unless the Commission acts on this problem "channel occupancy will be so great that each New York City licensee will substantially impair the utility of existing radio operations on the frequency involved."

3. The petition was opposed by the Association of Maximum Service Telecasters, Inc. (MST) principally on the grounds that, in MST's views, the moratorium and allocations of additional frequencies sought by ITA are not justified.

4. The Commission is, of course, aware of the shortage of frequencies for taxicab radio operations in the New York City area. We recently addressed that problem in our Report and Order in Docket 20109[3] where we allocated six additional frequency pairs for the exclusive use of taxicab operations. In taking that action we stated:

> * * * While six pairs of channels may not accommodate all of the immediate taxicab radio requirements in New York City, in view of the magnitude of the total frequency requirements in that industry, they will afford substantial immediate relief. It is apparent, however, that the overall solution will have to be found on frequencies between 806 and 947 MHz recently made available for land mobile purposes in Docket No. 18262 * * *

5. The six pairs of frequencies and the higher channel loading we have specified for taxicab operations on 470-512 MHz frequencies (e.g., 200 mobiles per frequency pair) would allow for substantial but controlled growth of taxicab radio operations in the New York City area for the immediate future. The imposition of the "freeze" proposed by ITA could inhibit the establishment of needed communication systems on the new frequencies and, in so far as frequencies in the 470-512 MHz are concerned, is quite unnecessary. The frequency loading criteria we have established would preclude the overloading of these channels ITA fears. Further, although we realize that the taxicab frequencies in the lower bands are generally congested, ITA has not shown by specific information that some additional use cannot be made of some of those frequencies thereby providing still more needed communication service. While the possibility of overloading some of those channels exists, we assume that the self-interest of potential

[1] Except those which proposed operation on the taxicab "tertiary" channels.

[2] The petition also discussed reduction of the mileage separation limitation on tertiary frequencies. However, ITA stated it would file a separate petition covering this aspect; consequently, it will not be covered in this proceeding.

[3] Reallocation of land mobile channels in the 470-512 MHz band in the New York and Los Angeles urbanized areas, Report and Order, Docket No. 20109, released December 19, 1974, 49 FCC 2nd 1300.

new users would militate against it. On balance, then, we do not believe that the moratorium proposed by ITA on further taxicab licensing in New York City would serve the public interest, and that request will be denied.

6. Commission actions on Docket 18262 have been completed. Thirty MHz of spectrum space has been allocated in the Public Safety, Industrial, and Land Transportation Radio Services and applications for radio station authorizations may now be filed. Although we realize that equipment necessary for operations in the 806–866 MHz region is not widely available in the market, some models have been type-accepted. We believe that the proper course of the taxicab industry in New York City (and elsewhere where similar problems may exist) would be to assess its overall radio communication requirements and to plan, with the land mobile equipment industry, for the development of innovative communication systems in the new spectrum we have allocated. In view of the magnitude of the potential requirements, it would be fruitless to look for overall solutions to the taxicab frequency shortage problems in the New York City area in the lower bands.

7. There is, however, a possibility for making some use of an unallocated pair of "tertiary" frequencies in the 150 MHz and we take this opportunity to examine it. The two frequencies are 152.465 and 157.725 MHz which are "bandedges" situated between allocations to the Taxicab and the Business Radio Services.[4] We have previously indicated that we intended to allocate these two channels to the Taxicab Radio Service. See Report and Order, Docket 19753, 41 FCC 2nd 219. Therefore, we are asking for comments on this proposal. The comments should consider the fact that these frequencies are 15 kHz removed from regularly assignable frequencies in the Taxicab Radio Service and from frequencies designated for paging operations in the Business Radio Service, thereby creating the potential for adjacent channel interference. Further, consideration should be given to the fact that there is no established coordinating mechanism for the Business Radio Service frequencies in the 150–160 MHz band so that the necessary interservice coordination for the use of these frequencies would have to be made by taxicab applicants on a case-by-case basis in the local area involved.

8. In view of the foregoing, the Petition (RM-2485) filed by the International Taxicab Association is granted to the extent indicated herein and it is denied in all other respects.

9. The proposed amendment to Parts 2 and 93 of the rules, as set forth below, are issued pursuant to the authority contained in sections 4(i) and 303(c), (h), and (r) of the Communications Act of 1934, as amended.

[4] Business allocation also available to the Forest Products and Special Industrial Radio Services on a secondary basis.

10. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before March 29, 1976, and reply comments on or before April 28, 1976. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission will also take into account other relevant information before it, in addition to the specific comments invited by this notice.

11. In accordance with the provisions of § 1.419 of the Commission rules, an original and 11 copies of all statements, briefs, or comments filed shall be furnished to the Commission. Responses will be available for public inspection during business hours in the Commission's Public Reference Room in its headquarters in Washington, D.C.

Adopted: January 14, 1976.

Released: January 21, 1976.

FEDERAL COMMUNICATIONS COMMISSION,[6]
[SEAL] VINCENT J. MULLINS,
Secretary.

Part 2 and 93 of the Commission's rules and regulations are amended as follows:

§ 2.106 [Amended]

I. Part 2. § 2.106, of the Commission's rules is amended to read as follows:

Band (MHz)	Service	Class of station	Frequency	Nature of service of stations
7	8	9	10	11
*	*	*	*	*
152–152.255	LAND MOBILE.	Base. Land mobile.	----------	DOMESTIC-PUBLIC.
152.255–152.4725	LAND MOBILE.	Base. Land mobile.	----------	LAND TRANSPORTATION. (NG 38)
152.4725–152.495	LAND MOBILE.	Base. Land mobile.	----------	INDUSTRIAL.
*	*	*	*	*
157.45–157.7325	LAND MOBILE.	Base. Land mobile.	----------	LAND TRANSPORTATION. (NG 5) (NG 38)
157.7325–157.755	LAND MOBILE.	Base. Land mobile.	----------	INDUSTRIAL.
*	*	*	*	*

* * * * *

II. Section 93.402 is amended by adding the two frequencies 152.465 and 157.725 MHz to the frequency list in paragraph (b).

§ 93.402 Frequencies below 952 MHz available for base and mobile stations

* * * * *

(b) * * *

	Mobile only megahertz
Base and mobile megahertz:	
152.450	157.710
152.465	157.725

* * * * *

[FR Doc.76-2342 Filed 1-26-76;8:45 am]

[47 CFR Part 73]

[Docket No. 20486]

FM BROADCAST STATIONS

Table of Assignments in Certain Cities in Florida

Report and Order—(Proceeding Terminated). In the matter of amendment of § 73.202(b), FM Broadcast Stations. (Arcadia, Lake Placid and Englewood, Florida), Docket No. 20486, RM-2397.

1. The Commission has before it for consideration the notice of proposed rulemaking, adopted May 13, 1975 (40 FR 23475), proposing two alternatives: (1) To assign Channel 252A to Englewood, Florida, and to Lake Placid, Florida, as a first FM channel for each community, and to delete Channel 252A from Arcadia, Florida, without replacement, or (2) to make no changes in the FM Table of Assignments with regard to the abovementioned communities. Comments have been received from Salter Broadcasting Company (Salter), the Lake Placid proponent, and licensee of AM Station WFVR and Station WKKD-FM, Aurora, Illinois; Sarasota-Charlotte Broadcasting Corporation (S-C Corp.), the Englewood proponent, and licensee of daytime-only AM Station WENG, Englewood; Arcadia-Punta Gorda Broadcasting Co., Inc. (Arcadia-Punta Gorda), licensee of AM Station WAPG, Arcadia, and applicant for a station on Channel 252A, Arcadia; Avon Electronic Services, Inc., licensee of AM Station WAPR, Avon Park, Florida; and Frank U. Fletcher. Reply comments have been received from Arcadia-Punta Gorda and from Salter Broadcasting Co.

2. The first alternative proposal combines two separate petitions which request the deletion of Channel 252A from Arcadia and its reassignment to Lake Placid and Englewood, respectively.[1] The second alternative proposal, in effect, denies both petitions. The Notice, in order to determine which alternatice would better serve the public interest, requested

[6] Commissioner Lee absent.

[1] Channel 252A may be assigned to each of the two communities consistent with the Commission's mileage separation requirements. Section 73.207(a) provided the transmitting antenna is located 6.7 miles north-northwest of Lake Placid and approximately 1 mile west of Englewood.

a Roanoke Rapids showing (9 F.C.C. 2d 672 (1967)) for each community. We shall discuss the submitted Roanoke Rapids showings for each community along with other relevant comparative factors to determine whether the requested reassignments of Channel 252A represent a fair, efficient and equitable distribution of FM channels as required by section 307(b) of the Communications Act.

3. Lake Placid, Florida (pop. 656),[2] is located in Highland County (pop. 29,507) approximately 71 miles east of Sarasota and 32 miles east of Arcadia. Lake Placid has no local aural service.[3]

4. Englewood, Florida (pop. 5,108), is located in Charlotte County (pop. 27,559) and in Sarasota County (pop. 120,413), approximately 27 miles south of Sarasota, and 35 miles southwest of Arcadia. Englewood has one AM station, WENG (Class II, daytime-only), licensed to S-C Corp. FM service is received from Station WAMR-FM (Channel 221A), Venice, Florida, located 10 miles to the north.

5. Arcadia, Florida (pop. 5,658), the seat of DeSoto County (pop. 13,060), is located approximately 65 miles southeast of Tampa and 42 miles southeast of Sarasota. Arcadia has one AM station, WAPG (Class III, daytime-only), licensed to Arcadia-Punta Gorda, and one FM assignment, Channel 252A, presently unoccupied with one application pending which was filed August 27, 1974 (BPH-9148) by Arcadia-Punta Gorda.

6. *Lake Placid comments.* Salter submitted data which indicate that its proposed Lake Placid station operating at the assumed facilities for a Class A station of 300 feet and 3 kW power would provide a first FM service to a 169 square-mile area and a second FM service to an area of 189 square miles. While no population figures were furnished by Salter, we were told by Arcadia-Punta Gorda that the assumed Lake Placid station would provide a first FM service to 1,288 persons in a 156 square-mile land area and a second FM service to 3,613 persons in a 246 square-mile area. Regarding the population of the Lake Placid area, Salter provided us with additional information from a newspaper article which quotes a report of the University of Florida Division of Population Studies. According to the report, it is estimated that the population of Highlands County as of July 1, 1974, totals 40,659 residents, a 37.8 percent increase over the 1970 U.S. Census figure, and that the population of Lake Placid has grown to 721, a 10 percent increase. Salter also asks us to consider in this context the unincorporated areas of Highlands County which have increased in population some 61.1 percent according to the same report. Salter alleges that some 31,00 persons reside in the 10-mile-radius area constituting the proposed station's 1 mV/m contour.

7. Arcadia-Punta Gorda argues that a Lake Placid FM assignment cannot be justified because the needs of the community itself, not those of the surrounding areas, must be the principal basis upon which an assignment is premised.[4] It notes that Salter has conceded that Lake Placid is too small for an FM station. It also observes that it has been Commission policy to refuse an FM assignment to communities of comparable size which already receive broadcast service.[5] Finally, Arcadia-Punta Gorda requests that we consider the economic effects of a Lake Placid station on other Highland County stations in making our determination. Avon Electronic Services also opposes the proposal to reassign Channel 252A to Lake Placid arguing that since Arcadia is a much larger community, it deserves the assignment. It also notes that Highlands County already has 3 AM stations[6] and 2 FM channel assignments.[7]

8. I reply comments, Salter responds that any economic consequences should be considered at the application stage and that coverage areas of other Highland County stations only marginally overlap the proposed Lake Placid station. Salter admits that by proposing a Lake Placid assignment it never intended to serve only residents within the corporate limits of the city but to serve the surrounding areas which form the "Lake Placid community."

9. *Englewood comments.* S-C Corp., in its comments, states that while the proposed Englewood facility would not provide a first FM service to any area, a second FM service would be provided to 1,843 persons in a 2.5 square mile area. It also asserts that its proposal would provide the only apparent means of securing a local nighttime service to Englewood and a local service to Lake Placid. It notes that while Arcadia also has local daytime AM service, it operates on a regional channel and can obtain nighttime service. It contends that Englewood's daytime-only AM station cannot obtain nighttime operating authority because it operates on a Class I-B clear channel. Regarding the need for an Arcadia channel, S-C Corp. notes that the original assignment was made in the "Third Report, Memorandum Opinion and Order" in Docket No. 14185, adopted July 25, 1963, 40 F.C.C. 747, without the type of showing that is now needed for the Englewood and Lake Placid proposals herein. Finally, S-C Corp. asserts that the U.S. Census population figure for Englewood is unreliable because it is an unincorporated community which lies in two separate counties and that a study by the Englewood Chamber of Commerce, which estimated the 1974 population at 24,986 residents, should be used instead. Frank U. Fletcher provides extensive demographic data for Englewood including further population figures which corroborate previous information submitted by S-C Corp. He believes that assignment of Channel 252A to both Englewood and Lake Placid would represent a more efficient use of the frequency by providing a first service to as much of the population as possible.

10. Arcadia-Punta Gorda argues that Englewood is already well served by its AM station and by the 1 mV/m FM service received from five nearby stations located in Venice, Sarasota, Port Charlotte, and Fort Myers. In addition, it states that 9 AM stations provide service to Englewood and four of those stations place a 2 mV/m signal over the community. It also notes that the contour of the proposed Englewood facility overlaps the service areas of FM stations at Bradenton, Punta Gorda and Sarasota. It alleges that another deficiency in the Englewood proposal is the restriction on site selection. The transmitter would have to be located at the very edge of the Florida mainland either on the beach or on the Punta Gorda Beach Key with the result that about one-half of the station's 1 mV/m contour would extend over the Gulf of Mexico, according to an attached engineering exhibit.

11. *Arcadia comments.* Arcadia-Punta Gorda submitted demographic information for the city of Arcadia which adequately demonstrates that there is a need for local FM service. Briefly, it stated that Arcadia is the county seat and the center for a wide variety of agricultural, industrial and manufacturing activity. It notes that the largest orange grove in the world is located nearby. We are also told that since 1971 some 96 new businesses have commenced operations. Two weekly newspapers and a free press provide Arcadia residents with media service. Arcadia-Punta Gorda argues that in view of this recent growth it would be inappropriate to delete Arcadia's only FM assignment at this time. Regarding our Roanoke Rapids criteria, 9 F.C.C. 2d 672 (1967), Arcadia-Punta Gorda alleges that a first FM service would be provided to 9,276 persons in a 362 square mile area and a second FM service to 1,948 persons in an area of 112 square miles. Based on this showing, it argues that reassignment of Channel 252A to Englewood and Lake Placid would be grossly inefficient since FM stations at those communities would offer a smaller first and second service, even if combined. S-C Corp. asserts that an Arcadia FM station would only offer a first FM service to 1,617 persons in a 126 square mile area and a second FM service to

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[2] All population figures are taken from the 1970 U.S. Census, as corrected, unless otherwise stated.

[3] The FM station closest to Lake Placid is WSKP-FM (Channel 288A), Sebring, Florida, located 15 miles to the north.

[4] Citing Richlands, Virginia, 42 F.C.C. 2d 727, 728 (1973).

[5] Citing Cayce, South Carolina, 30 F.C.C. 2d 180 (1971); Whaleyville, Virginia, 28 F.C.C. 2d 641 (1971).

[6] Stations WSEB and WJCM are licensed to serve Sebring and Station WAPR operates in Avon Park.

[7] Station WSKP-FM (Channel 288A) is assigned to Sebring. Channel 292A, Avon Park, is presently unoccupied, with 2 applications pending—Tri County Stereo, Inc., filed July 27, 1973 (BPH-8523) and Morrison Enterprises, filed January 16, 1974 (BPH-8782).

8,056 persons in a 270 square mile area.[8]

12. *Discussion.* The Commission is required under section 307(b) of the Communications Act of 1934, as amended, to provide a fair, efficient and equitable distribution of radio service to the various communities of the country. We have analyzed submitted Roanoke Rapids showings to determine which proposal would more efficiently distribute radio service in accordance with two important assignment criteria[9]—provision of a first or second FM service to as much of the United States as possible.[10] The *Notice* requested that the proponents of the various communities involved furnish Roanoke Rapids showings. The results of these studies, after staff analysis are summarized as follows:

City	1st FM service	2d FM service
Arcadia	7,352 persons (195 mi²)	2,555 persons (259 mi²).
Englewood	0 persons (0 mi²)	1,843 persons (2.5 mi²).
Lake Placid	1,288 persons (156 mi²)	3,613 persons (246 mi²).

From the above chart, it is clear, as Arcadia-Punta Gorda has argued, that the Englewood and Lake Placid showings, even when taken together, will not provide FM coverage to as many people in unserved and underserved areas as the proposed Arcadia station. Under these circumstances, we believe the public interest would be better served by denying the Lake Placid and Englewood proposals.[11]

13. While our decision to retain Channel 252A at Arcadia is primarily based on the Roanoke Rapids criteria, we also find support in a comparative analysis of need in the respective communities. As noted before, Arcadia, a county seat, has one daytime-only AM station, the only service for DeSoto County. Englewood also has one daytime-only AM station but appears to receive adequate service from various nearby stations. At to S-C Corp.'s contention that the Arcadia AM station can obtain nighttime authority while Englewood's AM station cannot due to its operation on a Class I-B clear channel frequency, we note that operation of an AM station on a regional channel does not by itself guarantee the approval for full-time authority if requested. In any case, the benefits of such operation would be dubious since it has been shown by Arcadia-Punta Gorda that the Arcadia AM station would be limited to a 35 mVm interference-free contour at night covering an area of 31.2 square miles with 6,092 persons (only 434 of which are nonresidents of Arcadia) while an FM station at Arcadia would cover 660 square miles and 14,613 persons. Lake Placid has no local aural service. However, the community has a population of only 656 persons, a decline of 34.9 percent from its 1960 U.S. Census figure of 1,007. Regardless of this decline, we would not ordinarily assign a channel to a community of this size when it or other precluded channels could be more efficiently utilized elsewhere. See Berryville and Harpers Ferry, W. Va., Docket No. 20362, 40 FR 49333, —— F.C.C. 2d —— (1975).[12] However, Salter has requested the assignment of Channel 252A to the "Lake Placid community" made up of "resident living on or near the shores of the twenty-two beautiful fresh water lakes located within a ten-mile radius of the Lake Placid post office * * *." The status of Lake Placid as a community, as the term is used to assign FM channels, depends on "whether the residents function as and conceive of themselves as residents of a community, around which their interests coalesce."[13] Further, we have stated that the term "community" refers to "a community of interests associated with an identifiable population grouping."[14] We have not been shown, in this case, that the numerous lakeshore homes in central Highlands County has this community of interests. In any event, while such a showing would bolster the population total of Lake Placid as a community, it would fail to enlarge the first FM service area which is the factor that must take priority in a case of this nature.

14. While we have decided to retain Channel 252A at Arcadia, we note that should there be an undue delay in building an authorized station or in commencing operations, a further petition to reassign the channel elsewhere would be considered.

15. *Accordingly, it is ordered,* That the petition to delete Channel 252A at Arcadia and to reassign it to Englewood and Lake Placid, respectively, are denied.

16. *It is further ordered.* That this proceeding is terminated.

Adopted: January 19, 1976.

Released: January 21, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.76-2346 Filed 1-26-76;8:45 am]

[8] The disparity in first and second FM service showings for Arcadia can be explained by S-C Corp.'s assumption that Station WINK-FM (Channel 245), Fort Meyers, will apply to move its transmitter site, and by the recent grant of an application by Station WEEJ (Channel 261A), Port Charlotte, to move its transmitter site (BMPH-14-562). We feel that it would be proper to consider only Station WEEJ's proposal since no application is on file at the Commission for Station WINK-FM.

[9] See Further Notice of Proposed Rule Making in Docket No. 14185, 27 FR 7797 (1962), incorporated by reference in the Third Report, Memorandum Opinion and Order in Docket No. 14185, 40 F.C.C. 747, 758 (1963).

[10] See Anamosa and Iowa City, Iowa, 46 F.C.C. 2d 520 (1974); Cape Girardeau, Mo., 51 F.C.C. 2d 492 (1975), recons. denied, 54 F.C.C. 2d 896 (1975); St. George, S.C., 52 F.C.C. 2d 1148, 1151 (1975). See also Houma and Crowley, La., 48 F.C.C. 2d 720 (1974).

[11] See, for example, Waverly, Tenn., 17 F.C.C. 2d 493 (1969), recons. denied, 20 F.C.C. 2d 487 (1969). Cf. Houma and Crowley, La., 48 F.C.C. 2d 720 (1974) and Snow Hill and Kinston, N.C., 55 F.C.C. 2d 769 (1975).

[12] See also Burnettown, S.C., 30 F.C.C. 2d 180 (1971); Whaleyville, Va., 28 F.C.C. 2d 641 (1971).

[13] Yorktown, Va., Notice, 38 Fed. Reg. 6695 (1973); Holiday, Fla., Notice, 40 FR 29303 (1975).

[14] Yorktown, Va., supra.

RENEGOTIATION BOARD

[32 CFR Part 1452]

SUBCONTRACTS TO PERFORM WORK OR FURNISH MATERIALS

Proposed Definition

The Renegotiation Board published under proposed rulemaking amendments to Part 1452 on December 24, 1974 (39 FR 44462-44463). Due to the time lapse and the significant changes made by the Board, this amendment is being republished in proposed form.

This regulation interprets the definition of the term "subcontract" contained in section 103(g)(1) of the Renegotiation Act of 1951, 50 U.S.C. App. 1213(g)(1). A new illustration of a subcontract to perform work or furnish materials under a prime contract or subcontract for work or services is being added to paragraph (b)(1) and the language of that paragraph is being clarified in order to assure that these illustrations be considered as examples of subcontracts and not as an all inclusive definition. Further, the definition of materials used in processing other materials is being eliminated from paragraph (b)(1) because this is merely explanatory of the illustrations of subcontracts and does not form a necessary part of the definition of such subcontracts.

In the proposed regulation published for rulemaking purposes on December 24, 1974, it was proposed that paragraph (b)(2) of the then effective regulation be eliminated in its entirety. As a result of further analysis and of several comments that were received, the Board has decided to retain paragraph (b)(2) of the present regulation, 32 CFR 1452.4 (b)(2), with the exception of subparagraph (v) thereof. Under § 1452.4(b)(2), purchase orders or agreements for several categories of materials considered by the Board to have only an indirect relation to renegotiable business are specifically excluded from the definition of "subcontract." The initial proposed amendment would have brought these items within the purview of renegotiation. In the current proposed amendment only subdivision (v) of § 1452.4(b)(2), which deals with "materials used in processing," is being deleted since it is not considered necessary.

The Board proposes to issue the proposed amendments not earlier than

March 4, 1976. Interested persons are hereby notified that any changes, to be considered, must be presented in writing, to the Renegotiation Board, 2000 M Street, NW., Washington, D.C. 20446.

Written material or suggestions submitted will be available for public inspection during regular business hours in the library at the principal office of the Board, 2000 M Street, NW., Washington, D.C.

Dated: January 22, 1976.

R. C. HOLMQUIST,
Chairman.

Section 1452.4 is amended as follows:

1. Paragraph (b)(1) is revised in its entirety;

2. Paragraph (b)(2) is amended by deleting subdivision (v) thereof; and

3. Paragraph (b)(3) is revised in its entirety; as amended § 1452.4 (b) reads as follows:

§ 1452.4 Subcontracts to perform work or furnish materials.

* * * * *

(b) *Interpretation of statutory provision.*—(1) *In general.*—Except as provided in subsections 103(g)(2) and (3) of the act, the term "subcontract" means any purchase order or agreement to perform all or any part of the work or to make or furnish any materials required for the performance of a renegotiable prime contract or subcontract. For example, without limiting the foregoing, the term "subcontract" includes any purchase order or agreement for any of the following: (i) The sale or processing of an end product which is to be delivered under a renegotiable prime contract; or (ii) the sale or processing of materials to be physically incorporated in such end product; or (iii) the sale, furnishing or installation of machinery, equipment or other materials used in the processing of such end product or materials incorporated therein; or (iv) the sale, furnishing or installation of materials incorporated in machinery, equipment or other materials used in the processing of such end product or materials incorporated therein; or (v) the sale, processing, furnishing or installation of materials, or the performance of work, required for the performance of a renegotiable prime contract or subcontract for work or services; or (vi) the performance of work or services required for the performance of a renegotiable prime contract or subcontract included in paragraphs (b)(1)(i), (ii), (iii), (iv) or (v) of this section.

(2) * * *

(v) [Deleted]

(3) *Office supplies.* Subcontracts to furnish office supplies are specifically excluded from the statutory definition of a subcontract. Therefore, subcontracts for office supplies, even though such office supplies are ultimately sold to a Department, are not subject to renegotiation. The term "office supplies" includes paper, ink, typewriter ribbons, binders, covers, blotters, paper clips, staples, and other items of a consumable character, as well as related items of a relatively short life and minor cost, such as pens, penholders, pencils, blotter pads and calendars; the term "office supplies" does not include office furniture, machinery and equipment, such as desks, chairs, lamps, rugs, wastebaskets, filing cases, typewriters and calculating, recording, reproducing and dictating machines.

* * * * *

(Sec. 109, 65 Stat. 22; 50 U.S.C.A., App. Sec. 1219)

[FR Doc.76-2336 Filed 1-26-76;8:45 am]

notices

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.

DEPARTMENT OF DEFENSE

Department of the Army

BALLISTIC MISSILE DEFENSE TECHNOLOGY ADVISORY PANEL

Closed Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-643), an announcement is made of the following committee meeting:

Name of Committee. Ballistic Missile Defense Technology Advisory Panel.

Dates of meeting. February 24 through 26, 1976.

Place. BMD Advanced Technology Center, 106 Wynn Drive, Huntsville, Alabama 35807.

Time. 0830-1630 hours on dates indicated above.

Proposed agenda. I. Review of Ballistic Missile Defense Advanced Technology Center Programs with New Members.

II. Continue to Review the Status of Discrimination with Emphasis on the Interaction of Penetration Aids with Radar and Optical Sensors.

2. The meeting is closed to the public since the agenda consists of BMDATC's on-going and future programs which are classified as SECRET or higher defense information pursuant to Executive Order 11652 (dated March 8, 1972); and therefore, do fall within the policies analogous to those recognized in section 552(b)(1) of Title 5, U.S. Code and national security does require that the details of these programs be withheld.

Dated: January 15, 1976.

WILLIAM A. DAVIS, Jr.,
Director.

[FR Doc.76-2254 Filed 1-26-76;8:45 am]

Department of the Navy

CHIEF OF NAVAL OPERATIONS INDUSTRY ADVISORY COMMITTEE FOR TELECOMMUNICATIONS (CIACT)

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is given that a closed meeting of the Chief of Naval Operations Industry Advisory Committee for Telecommunications (CIACT) will be held on Wednesday and Thursday, February 11 and 12, 1976. The meeting will commence at 8:30 a.m. on both days, at the Naval Electronics Laboratory Center, 271 Catalina Boulevard, San Diego, California.

The purpose of the meeting is to solicit the advice of the committee concerning command and control and communications developments being undertaken by the Navy. All matters which will be under consideration at this meeting are of a sensitive classified nature and are required by executive order to be kept secret in the interest of national defense. The Secretary of the Navy has therefore determined in writing that the public interest requires that the meeting be held in closed session in its entirety because it will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

Dated: January 22, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-2441 Filed 1-27-76;8:45 am]

Office of the Secretary

DRUG QUALITY ASSURANCE

Interagency Agreement With the Food and Drug Administration

CROSS REFERENCE: For a document giving notice of an Interagency Agreement between the Department of Defense and the Health, Education, and Welfare Department, Food and Drug Administration, see FR Doc. 76-2265 appearing in the Notices Section in this issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OUTER CONTINENTAL SHELF OFF TEXAS, LOUISIANA, MISSISSIPPI, ALABAMA AND FLORIDA

Oil and Gas Lease Sale No. 41; Corrections

In FR Doc. 76-1449, appearing at page 2406, in the issue for Friday, January 16, 1976, the following amendments and corrections are made.

1. On page 2409, in the table headed "OCS Official Leasing Map, High Island Area, Texas Map No. 7 (Approved July 16, 1954, Revised August 1955)," for tract 41-9, the acreage should read "1910."

2. On page 2412, in the table headed "OCS Official Leasing Map, South Marsh Island Area, North Addition, Louisiana Map No. 3D (Approved April 16, 1971; Revised January 18, 1972)," tracts 41-55 and 41-56 are hereby withdrawn from this lease sale.

3. On page 2413, the table headed "OCS Official Leasing Map, South Pass Area—South Addition, Louisiana Map No. 9A (Approved September 8, 1959)" should read "OCS Official Leasing Map, South Pass Area—South and East Addition, Louisiana Map No. 9A (Approved September 8, 1959)."

4. On page 2413, in the table headed "OCS Official Leasing Map, Main Pass Area, Louisiana Map No. 10 (Approved June 8, 1954; Revised July 22, 1954)," for tract 41-69, the acreage should read "1404.72."

5. On page 2416, the NOTE following the tract descriptions, delete the sentence "Tract 41-5 identified in the Final Environmental Impact Statement is not included in this notice."

6. On page 2416, the footnotes following the tract descriptions, delete footnote 2. Change footnote 3 to read "That portion located more than three nautical miles seaward of the baseline described in the Supreme Court Decree of June 16, 1975. (U.S. vs. Louisiana, No. 9 Original, 422 U.S. 13)."

GEORGE L. TURCOTT,
Associate Director,
Bureau of Land Management.

JANUARY 21, 1976.

Approved: January 21, 1976.

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

[FR Doc.76-2236 Filed 1-26-76;8:45 am]

UTAH STATE MULTIPLE USE ADVISORY BOARD

Meeting

Notice is hereby given that the Utah State Multiple Use Advisory Board of the Bureau of Land Management will meet March 4, 1976, in the Rodeway Inn, 1292 South University Avenue, Provo, Utah, 84601. The meeting will be devoted principally to consideration of the Bureau's grazing environmental impact statement program. A session at 8:30 a.m. will consist of presentations and discussions about the Hot Desert Grazing Environmental Impact Statement of the southwestern corner of Utah.

At 1:00 p.m. there will be a field trip to Spanish Fork Canyon for consideration of rights-of-way corridors. Members of the public wishing to participate in the field trip must furnish their own transportation. Board members will return to the hotel at approximately 3:30 p.m. to discuss the Bureau's corridor problems and opportunities.

The meeting will be open to the public. There will be some time at 11:30 a.m. and 4:30 p.m. for brief statements from the public. Such statements should be limited to agenda items, except that persons may make recommendations of topics to be considered at future meetings. Those wishing to make an oral statement on an agenda item should notify the State Director, Utah State Office, Bureau of Land Management, P.O. Box 11505, Salt Lake City, Utah 84147, by close of business February 27, 1976. Interested persons or

organizations may file written statements for the Board's consideration and such statements should be submitted at the meeting or mailed in advance to the Utah State Director at the above address.

Information concerning the meeting may be obtained from Jack M. Reed, public affairs officer, Bureau of Land Management, P.O. Box 11505, Salt Lake City, Utah, 84147 (801-524-5311).

A summary report of the meeting will be available for public perusal or copying about April 1, in the Bureau of Land Management, Utah State Office.

PAUL L. HOWARD,
State Director.

JANUARY 20, 1976.

[FR Doc.76-2255 Filed 1-26-76;8:45 am]

Fish and Wildlife Service

ENDANGERED SPECIES PERMITS

Official Action

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications received under section 10 of the Endangered Species Act of 1973, 16 U.S.C. 1539. Each permit was issued only after it was determined that it was applied for in good faith; that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973.

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" JULY 17, 1975 (40 FR 30145-46)

Applicant: Nebraska Game & Parks Commission, Post Office Box 30370, Lincoln, Nebraska 68503. Mr. Willard R. Barbee, Director.

Official Action: Issued permit October 2, 1975: "Authorized to capture, mark, transport and transplant PEREGRINE FALCONS (*Falco peregrinus*), and BLACK-FOOTED FERRETS (*Mustela nigripes*), in Nebraska."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" JULY 8, 1975 (40 FR 28647-48)

Applicant: Harold C. Yanik, Post Office Box 306, Charlotte Court House, Virginia 23923.

Official Action: Issued permit October 2, 1975: "Authorized to acquire and transport three (3) pairs of ROTHCHILD'S MYNAHS (*Leucopsar rothschidi*), from Washington, D.C., to location in Block 10 (Yanik's domicile on Route 645, Charlotte Court House, Virginia). The National Zoo is authorized to transfer the mynahs."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" JULY 17, 1975 (40 FR 30144-45)

Applicant: Dr. Michael W. Fox, Department of Psychology, Washington University, St. Louis, Missouri 63130.

Official Action: Issued permit October 2, 1975: "Authorized to import no more than five (5) ASIATIC WILD DOGS (*Cuon alpinus*), from India."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" JULY 22, 1975 (40 FR 30727-28-29)

Applicant: Louisiana Wildlife and Fisheries Commission, 400 Royal Street, New Orleans, Louisiana 70130. J. Berton Angelle, Director.

Official Action: Issued permit October 3, 1975: "Authorized to capture, band, transport, hold, release and study no more than 100 BROWN PELICANS (*Pelecanus occidentalis*) per year. Capture to take place in Florida—and release in Louisiana."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" JULY 28, 1975 (40 FR 31644-45)

Applicant: St. Louis Zoological Park, Forest Park, St. Louis, Missouri 63110. Richard D. Schultz, Director.

Official Action: Issued permit October 6, 1975: "Authorized to acquire 2.2 WHITE-NECKED ROCK FOWL (*Picathartes gymnocephalus*), from the National Zoo, Washington, D.C., and transport them from Schaumburg, Illinois, to St. Louis, Missouri."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" AUGUST 1, 1975 (40 FR 32363-64)

Applicant: Cleveland Zoological Park, Post Office Box 09040, Cleveland, Ohio 44109. Dr. Leonard J. Goss, Director.

Official Action: Issued permit October 6, 1975: "Authorized to export one (1) JAGUAR (*Panthera onca*), to Venezuela."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" SEPTEMBER 5, 1975 (40 FR 41157-58)

Applicant: Woodland Park Zoological Gardens, 5500 Phinney Avenue, North, Seattle, Washington 98107. James W. Foster, D.V.M., Interim Director.

Official Action: Issued permit October 7, 1975: "Authorized to export 1.2 ROTHSCHILD'S MYNAHS (*Leucopsar rothschildi*) to Canada."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" AUGUST 7, 1975 (40 FR 33261-62-63)

Applicant: Dr. Maurice F. Mettee, Alabama Geological Survey, Environmental Division, Drawer O, University, Alabama 35486.

Official Action: Issued permit October 7, 1975: "Authorized to take, transport and study OKALOOSA DARTERS (*Etheostoma okaloosae*), in Florida and Alabama. Valid for use by permittee named above and to Edward Crittenden, Panama City, Florida."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" JULY 17, 1975 (40 FR 30140-30141)

Applicant: Lions Etcetra, 6867 Soledad Canyon, Acton, California 93510. Mr. Noel James Marshall, Owner, 4156 Knobhill Drive, Sherman Oaks, California 91403.

Official Action: Issued permit October 15, 1975: "Authorized to import and transport three (3) male, and three (3) female, TIGERS (*Panthera tigris*), from Canada to California."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" AUGUST 1, 1975 (40 FR 32364-65-66)

Applicant: Erie Zoological Society, 653 Shunpike Road, Post Office Box 3268, Erie, Pennsylvania 16508. James P. Rhea, Director.

Official Action: Issued permit October 22, 1975: "May export from Erie, Pennsylvania, through Chicago, Illinois, three (3) BENGAL TIGERS (*Panthera pardus*), to Santo Domingo, Dominican Republic."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" JULY 28, 1975 (40 FR 31643-44)

Applicant: Detroit Zoological Park, 8450 W. Ten Mile Road, Post Office Box 39, Royal Oak, Michigan 48068. James C. Savoy, D.V.M., Director.

Official Action: Issued permit October 22, 1975: "May transport interstate in the course of a commercial activity, two male and two female CHEETAH (*Acinonyx jubatus*), from Grand Prairie, Texas, to Detroit, Michigan, for purposes of propagation."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" JULY 28, 1975 (40 FR 31643-43)

Applicant: Pamela Parker Cook, Museum of Comparative Zoology, Harvard University, Cambridge, Massachusetts 02138.

Official Action: Issued permit October 29, 1975: "May import not to exceed two (2) male—and two (2) female—MOUNTAIN PIGMY POSSUM (*Burramys parvus*), through the port of New York, and transport them to the Museum of Comparative Zoology, Harvard University, Cambridge, Massachusetts."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" AUGUST 7, 1975 (40 FR 33258-59)

Applicant: Lincoln Park Zoological Gardens, 100 West Webster Avenue, Chicago, Illinois 60614. L. E. Fisher, D.V.M., Director, Saul L. Kitchener, Assistant Director.

Official Action: Issued permit October 29, 1975: "May export one (1) male ASIATIC LION (*Panthera leo persica*), from the Lincoln Park Zoological Gardens, Chicago, Illinois—and import—from the East Berlin Zoo, Germany, one (1) male ASIATIC LION."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" AUGUST 13, 1975 (40 FR 34011-12)

Applicant: Zoological Society of Cincinnati, 3400 Vine Street, Cincinnati, Ohio 45220. Edward J. Maruska, Director.

Official Action: Issued permit October 29, 1975: "May export through a port listed in Block 10 (any designated port listed in 50 CFR 14.12), one (1) male PERSIAN LEOPARD (*Panthera pardus saricolor*), and—import through a port listed in Block 10, one (1) male PERSIAN LEOPARD (*Panthera pardus saricolor*), from the Leipzig Zoo."

NOTICE OF APPLICATION PUBLISHED IN "FEDERAL REGISTER" AUGUST 7, 1975 (40 FR 33259-60)

Applicant: Mr. James E. Coffey, 4843 Greenwood Terrace, Cincinnati, Ohio 45226.

Official Action: Issued permit October 30, 1975: "May import from Falmouth, Jamaica, and transport at Chicago, Illinois, to Cincinnati, Ohio, four (4) JAMAICAN BOAS (*Epicrates subflavus*)."

Each permit is available for public inspection during normal business hours at the U.S. Fish and Wildlife Service's office in Suite 600, 1612 K Street, N.W., Washington, D.C.

Dated: January 22, 1976.

C. R. BAVIN,
Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service.

[FR Doc.76-2385 Filed 1-26-76;8:45 am]

National Park Service

VISITOR INTERPRETIVE TRANSPORTATION SERVICES

Suspension

Pursuant to Pub. L. 93-62 (Act of July 6, 1973, 87 Stat. 146) and the authority of the Act of July 25, 1916, as amended and supplemented (16 U.S.C. 1 et seq.), visitor interpretive transportation services have been provided between the Mall

and the grounds of the Robert F. Kennedy ("RFK") Memorial Stadium.

This service was initiated as a part of the rehabilitation of the National Mall and was designed to facilitate visitation and to ensure protection of the Mall area, and was one of several measures calculated to mitigate the loss of parking spaces involved in that rehabilitation because of the closing of Adams and Washington Drives. Notice of the institution of this service was given by notice in the FEDERAL REGISTER on Friday, January 24, 1975 at 40 FR 3792. In the final Environmental Statement concerning the Mall rehabilitation project, National Capital Parks stated that this service, plus a similar service to the North Pentagon Parking Lot, would operate from the initiation of construction through March 1976 on an interim basis as required. It was further stated that in March 1976 the Park Service services would be replaced by the Bicentennial Transportation Program. Notice of the reinstitution of the service to RFK Stadium and the initiation of service to the Pentagon North Parking Lot was given in the FEDERAL REGISTER on Thursday, December 4, 1975 at 40 FR 234.

On October 13, 1975, National Capital Parks began providing through its concessioner, Landmark Services, Inc., these visitor interpretive transportation services. Over the last month, National Capital Parks has found that the visitor utilization of the services is extremely low. Because of this extremely low utilization of the services, it is the opinion of the National Park Service that at this time and during this offpeak visitor season that these services are neither facilitating visitation nor providing the protection to the park area as designed. Accordingly, National Capital Parks has decided to temporarily suspend the provision of these services.

The Park Service will carefully observe visitor-use trends in the Mall area and will reinstitute the visitor interpretive shuttle service at such time as it becomes required in order to facilitate visitation and to provide protection to the park area by providing additional parking and lessening the environmental impact upon the Mall park area.

Therefore, effective on January 27, 1976, the above-mentioned services will be suspended. Should it be determined that the visitation levels require that the services be reinstated, further notice as to the reinstitution of those services will be given.

J. L. DUNNING,
Acting Director,
National Capital Parks.

[FR Doc.76-2506 Filed 1-26-76;9:08 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Notice of Designation Number A279]

TEXAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Orange County, Texas, as a result of tornadoes, flooding, and hailstorms May 29 and June 9, 1975; and excessive rainfall June 1 through July 2, 1975.

Therefore, the Secretary has designated this area as eligible for Emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Dolph Briscoe that such designation be made.

Applications for Emergency loans must be received by this Department no later than March 8, 1976, for physical losses and October 7, 1976, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 20th day of January 1976.

FRANK W. NAYLOR, Jr.,
Acting Administrator,
Farmers Home Administration.

[FR Doc.76-2362 Filed 1-26-76;8:45 am]

Federal Crop Insurance Corporation

DEPUTY MANAGER

Provisional Delegation of Authority

Pursuant to 1 AR 273b, provisional authority is hereby delegated to the individuals named below to act as Manager, Federal Crop Insurance Corporation, in the event of my inability to do so on account of enemy attack or other national emergency. The designees are listed in the order of their precedence to act.

Name	Title	Headquarters
Warren E. Dirks.	Deputy Manager	Washington, D.C.
Howard H. Sjogren.	Director, operations division.	Do.
John P. Skeffington.	Director, Administrative Management Division.	Do.
Robert C. Zeller.	Director, National Service Office.	Kansas City, Mo.

Dated January 16, 1976.

[SEAL] M. R. PETERSON,
Manager,
Federal Crop Insurance Corporation.

Concurred:

ROBERT L. SIEGLER,
Deputy Director,
Office of General Counsel.

[FR Doc. 76-2361 Filed 1-26-76;8:45 am]

Forest Service

MANTI DIVISION GRAZING ADVISORY BOARD

Meeting

The Manti Division Grazing Advisory Board will meet at 1:30 p.m. February 19, 1976, in the large conference room of the library, College of Eastern Utah, Price, Utah.

The purpose of the meeting is to discuss the following specific topics:

1. Requirements and changes in new 1976 Term Grazing Permits.
2. Review current status of proposed Forest off-road vehicle plan.
3. Update board members on new Resources Planning Act information and progress.
4. Summarize status of Manti Canyon Slide.
5. Consideration and review of policy and guidelines regarding animal damage control between Districts and adjoining Forests.
6. Revisions of U.S.D.A. committee management regulations.

The meeting will be open to the public. Persons who wish to attend should notify Mr. Kay Frischknecht, Manti, Utah, telephone 835-3741.

Written statements concerning specific topics of discussion may be filed with the committee before or after the meeting. Public comments and discussion concerning topics on the agenda will be permitted to the extent time permits.

REED C. CHRISTENSEN,
Forest Supervisor.

JANUARY 15, 1976.

[FR Doc.76-2253 Filed 1-26-76;8:45 am]

DEPARTMENT OF COMMERCE

Economic Development Administration

COBBLERS, INC.

Petition for a Determination

A petition by Cobblers, Inc., 2250 Reach Road, Williamsport, Pennsylvania 17701, a producer of footwear for women, was accepted for filing on January 20, 1976, under section 251 of the Trade Act of 1974 (Pub. L. 93-618). Consequently, the United States Department of Commerce has instituted an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of February 6, 1976.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.76-2333 Filed 1-26-76;8:45 am]

National Oceanic and Atmospheric Administration

FISHERMAN'S MARKETING ASSOCIATION OF WASHINGTON

Receipt of Application for a General Permit

Notice is hereby given that the following application has been received for a general permit to allow the taking of marine mammals incidental to the course of commercial fishing operations, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

The Fisherman's Marketing Association of Washington, 4215 21st Avenue West, Seattle, Washington 98199, has applied for a general permit, category 1, "Towed or Dragged Gear", to be effective February 15, 1976.

The Applicant is the holder of a general permit issued in 1975, which expired on December 31, 1975.

Copies of the application are available for review in the Office of the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 (telephone 202/634–7283), and the Office of the Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 98109 (telephone 206/442–7575). Interested parties may submit written views on this application on or before February 26, 1976, to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

Dated: January 15, 1976.

HARVEY M. HUTCHINGS,
Acting Associate, Director for Resource Management, National Marine Fisheries Service.

[FR Doc.76–2239 Filed 1–26–76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FDA–224–76–8050]

DRUG QUALITY ASSURANCE

Interagency Agreement With the Department of Defense

Pursuant to the notice published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697), stating that future agreements and memoranda of understanding between the Food and Drug Administration and others would be published in the FEDERAL REGISTER, the Commissioner of Food and Drugs issues the following notice:

The Food and Drug Administration executed an Interagency Agreement with the Department of Defense on December 17, 1975. The purpose of the agreement is to establish the procedures and guidelines for FDA assumption of the responsibility for assuring that the drugs and biologics DOD procures, stores and distributes are of appropriate quality. It reads as follows:

INTERAGENCY AGREEMENT
BETWEEN THE
DEPARTMENT OF DEFENSE
AND THE
FOOD AND DRUG ADMINISTRATION

I. *Purpose.* To formalize an agreement between Department of Defense (DOD) and the Food and Drug Administration (FDA) whereby FDA assumes the responsibility to assure for DOD that drugs and biologics procured, stored, and distributed by DOD are of the appropriate quality established by published standards and DOD procurement contracts and specifications.

II. *Background.* 1. The Office of Management and Budget (OMB) and the General Accounting Office (GAO) completed separate studies in late 1973 and early 1974 of Federal procurement of medical and nonperishable subsistence supplies. Both OMB and GAO recommended that the FDA be the agency responsible for quality assurance of all medical products procured by Federal agencies. In June 1974, the Director of OMB requested that HEW take the lead in developing an Executive Branch plan for a government-wide quality assurance program. FDA decided that due to the great diversity of medical products procured by the Federal Government, it would be desirable to first develop a quality assurance program covering drugs and biologics, and to include all other medical products in a second phase of the program.

2. DOD's procurement role involves preparation of specifications, determination of contractor responsibility, and the timely award and administration of contracts for drugs and biologics in accordance with the laws and regulations governing DOD procurement. Accordingly, the DOD contracting officer is the only person empowered by law to make interpretations and resolve disputes concerning the performance of a contract. FDA will furnish the services hereinafter described in accordance with these DOD procurement responsibilities.

3. It is understood by the parties that, as a general rule, the drug and biologics standards prescribed by the United States Pharmacopeia (USP), the National Formulary (NF), and FDA will satisfy the DOD requirements as to those products; however, this does not preclude the development and utilization by DOD of additional standards when deemed essential to satisfy a unique or special requirement of DOD or any of the military services.

III. *The Department of Defense and the Food and Drug Administration Agree.* 1. FDA will be responsible for timely quality assurance support, as hereinafter described, for all drugs and biologics DOD purchases, stores, and distributes. In addition, this agreement will include bacteriological media, in vitro diagnostic items, and agreed upon chemical specialty and related items.

2. Beginning on the date of this agreement FDA, at the request of DOD will review the capability of suppliers to produce drugs and biologics of an appropriate quality whenever these suppliers are being considered by DOD for award of a contract to deliver these items to the Government. During the quality review (hereinafter referred to as the "pre-award survey") the FDA will ascertain whether the supplier has the necessary organization, experience, operational controls, technical skills, production and technical equipment and facilities to produce the particular drug or biologic at a quality level conforming to the published standards and procurement specifications.

3. The Current Good Manufacturing Practices Regulations (CGMPRs) now under revision will become the quality standard applied to industry for the manufacturing, processing, packing or holding of drugs procured by governmental agencies. In the interim the existing procedural policy guides and standards, e.g. MIL STD 964, employed by DOD will remain applicable until FDA promulgates the revised CGMPRs.

4. The FDA will be the agency responsible for administrative interpretation and enforcement of the CGMPRs.

5. a. Whenever deemed advisable by FDA, or whenever requested by DOD, FDA investigative representatives will participate in a post award conference with the successful contractor in order to review contract requirements, evaluate the implementation of the contractor's quality system, and resolve conflicting interpretations prior to the start of production thereby minimizing the possibility of costly delays during later stages of the contract schedule. When requested by DOD, FDA will provide a written report of the quality aspects of the post award conference.

b. Thereafter, and in consonance with required contract delivery dates, FDA investigative representatives will conduct the verification, inspection, and evaluation of contractor's quality program and assure that the drug or biologic being tendered by the contractor is being produced in accordance with the contract requirements. These responsibilities will be implemented as hereafter indicated.

c. The foregoing responsibilities will be assumed on the date of this agreement beginning with a phase-in period. The phase-in period for the inplant quality assurance function will be approximately 60 days.

6. Beginning on the date of this agreement FDA will assume (within the limits of its technical capability) full responsibility for performing for DOD all quality assurance testing of samples to determine conformance with applicable standards and contract specifications for drugs and biologics, bacteriological media, in vitro diagnostic items, and agreed upon chemical specialty and related items. Testing of chemical reagents will be performed although other pre and post award functions for these items will not be the responsibility of FDA.

7. FDA will not recommend the acceptance of quality capability of a firm for procurement if the nature of the supplier's operation will not support a contracting officer's affirmative determination that the supplier has the capability to produce in accordance with contractual requirements.

8. The amount and degree of inspectional and analytical work required to be done under this agreement to ascertain compliance with the contract requirements will be as determined by FDA.

9. The purchasing office shall continue to prepare and be responsible for developing new and revised purchase specifications for items it procures. These specifications will be transmitted to FDA for its concurrence in accordance with Federal Property Management Regulations 41 CFR Chap. 101–29 and Defense Standardization Manual 4120.3M.

10. FDA will conduct in-plant investigations and evaluations of quality complaints received from DOD in accordance with the exigencies of the situation. Reports shall include recommendations for corrective action. For warranty purposes the contract specifications shall be the standard for resolving the question of quality.

11. Nothing in this agreement will preclude DOD representatives from making visits to suppliers with FDA or separately.

12. The inspection and related services as to drugs manufactured in foreign countries (which to date have been carried out by FDA

in accordance with an agreement between the Defense Supply Agency (DSA) and FDA approved October 1974) shall be carried out hereafter in accordance with this agreement. However, the following additional requirements shall apply as to this foreign inspection service:

a. The written evaluation of the foreign supplier's capability will be furnished by FDA to DOD within 30 days (or such mutually agreed upon time) after receipt of the request therefor. If a written evaluation cannot be furnished within the agreed upon time, FDA will telephone results of inspection to DSA and thereafter expeditiously forward the written evaluation.

b. During such inspections FDA will identify the existence of foreign patents or licenses and if materials to be used are from Communist controlled areas.

IV. *The Department of Defense Agrees.* 1. To furnish to FDA all relevant procurement information including quantities, delivery dates, and the applicable product specification.

2. To inform FDA immediately whenever any information is received which may impact adversely on the quality of any drug or biologic supplier or product.

3. To furnish a written request that FDA conduct an on-site inspection of a supplier's/contractor's analysis of a product, or other work covered by this agreement.

4. To participate in FDA's drug defect reporting system by expeditiously forwarding to FDA copies of all complaints associated with the quality of products covered by this agreement.

5. To submit samples and request analyses in accordance with FDA established procedures.

V. *The Food and Drug Administration agrees.* 1. To continue in a timely manner to revise and update the CGMPRs and to promulgate new CGMPRs for specific segments of the industry. During the development of new or revised CGMPRs, DOD will be given the opportunity to make comments thereon.

2. To review procedural and policy guidance relating to standards currently in use by DOD and incorporate as appropriate into FDA guidance systems.

3. To publish in FDA Inspection Operations Manual or other appropriate publication a listing of commonly used terms relating to the CGMPR's, and the standards DOD has been using, with definitions of the terms that will be recognized by all involved parties.

4. To furnish DOD on request a written preaward evaluation of a supplier's capability to supply a product which meets the solicitation specification requirements. The evaluation will include a narrative report that will substantiate the findings and recommendations. This written evaluation will be furnished in the contracting officer within 10 working days after receipt of the original request.

5. To examine contractor's lot/batch records of all finished lots including testing procedures and results, to assure compliance with specifications and contractual requirements.

6. To sample and examine contractor's finished lots of drugs according to the classification of defects (COD) stipulated in the contract. This sampling and examination will be done in plant. This sampling and examination will also include labeling, packaging, and packing as required. (Samples will be submitted to the FDA laboratory for analyses in those instances where the FDA investigator detects or suspects a problem with compliance that requires an analysis to confirm.)

7. To make acceptance/rejection determinations for each lot/batch on behalf of the Government. When a lot/batch is considered satisfactory and the contract specifies inspection and/or acceptance by the FDA at source, the acceptance will be indicated by signature of the FDA representative on a DD Form 250, Material Inspection and Receiving Report. The FDA inspection personnel will also be responsible for assuring that the contractor-prepared DD Form 250 is accurate. Further, the FDA will be contacted by the appropriate Contract Administration Office covering the status of DD Form 250.

8. To complete analytical work and furnish written report with laboratory findings and conclusions within 14 workdays following receipt of the sample by the proper laboratory facility. There will be instances where the 14 day limit cannot be met due to the nature of the analyses required. In all instances, sample analyses for the DOD will be handled in the most expeditious manner possible.

9. To make the determination when an analysis of a preaward sample is required for evaluation of a firm's quality.

10. a. To examine the product specifications which are forwarded pursuant to paragraph IV 1, above, to ascertain their compatibility with other standards which are applicable to the product in question. Since these specifications will be transmitted together with the solicitation for a DOD procurement in progress, the FDA review of the specifications will be expedited so as not to delay the procurement process.

b. To review for concurrence product specifications transmitted to it by DOD independently of any solicitation for procurement and pursuant to paragraph III 9, above.

11. To make available FDA inspectional and analytical personnel as witnesses and supply information and data to DOD for GAO protests, Armed Services Board of Contract Appeals, SBA cases, and such other cases where expertise is required.

12. To furnish DOD promptly with recall and other pertinent information that may affect Defense contracts or stocks.

13. To have its investigative personnel, at the request of DOD, ascertain the materials and methods used by a supplier or contractor to produce any drug or biologic as to which DOD must make a Buy American determination. It is recognized that this investigation (as well as that carried out under paragraph III 12 b, above) is not directly related to quality assurance. However, the investigation, which is necessary for DOD procurements, does require the expertise possessed by FDA and no longer readily available in DOD.

VI. *Names and addresses of participating activities.* Liaison officers:

1. For the Department of Defense:

Special Project Officer for Medical Materiel Management (DSAH-PV), HQ Defense Supply Agency, Cameron Station, Alexandria, VA 22314 (202) 274-6441.

2. For the Food and Drug Administration:

Director, Medical Products Quality Assurance Staff (HFC-50), Office of the Associate Commissioner for Compliance, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852 (301) 443-3590.

VII. *Resources*—1. *Funding.* DOD (DSA) will transfer $797,000 in FY 1976 and $199,250 in FY 1977 to FDA to accomplish these activities. For FY 1976, the transfer of funds from DOD (DSA) to FDA is based on an effective date of 1 July 1975. If this effective date is delayed, the FY 1976 estimate of $797,000 will be reduced proportionately. Funding for FY 1977 and subsequent years will be budgeted for by FDA.

2. Civilian Manpower Spaces. DOD (DSA) will transfer 46 civilian manpower spaces to FDA.

VIII. *Personnel.* It is hereby agreed that for the personnel involved in the drug quality assurance workload being transferred from DSA, that FDA will: 1. Make job offers to 7 personnel listed on enclosure #1 who are assigned to the Defense Personnel Support Center (DPSC) and perform laboratory testing related to drug quality assurance work.

2. Make job offers, subject to the following conditions, to those employees listed on enclosure #2 who are assigned to the Defense Contract Administration Services (DCAS) and perform in-plant quality assurance work.

a. Within the allocated manning spaces (28), offers will be made to personnel who meet the educational and experience requirements of the Civil Service Commission Qualification Standards for Consumer Safety Officer, GS-696. Generally, the educational requirements involve 30 semester hours from an accredited college or university in any combination of related course work in the following fields: biological sciences, chemistry, pharmacy, physical sciences, food technology, nutrition, home economics, epidemiology and engineering.

b. Offers will be made in descending order from the highest to the lowest percentage of time worked and in retention order within these percentages to those employees who spend at least 50 percent of their time in drug quality assurance activities. If FDA has vacancies remaining, others on the list indicating their interest in being hired by FDA will be considered for employment.

IX. *Period of Agreement.* This agreement, when accepted by both parties, will have an effective period of performance commencing January 1, 1976, with no expiration date, and may be terminated by either party with concurrence of OMB upon 180 days advance written notice to the other party.

X. *Revisions.* Additional procedures and revisions as may be necessary for the implementation of this agreement and to effectuate the intention of the parties may be developed jointly by FDA and DOD. Such revisions shall become effective on such date as is mutually agreed upon by the parties.

XI. *Authority.* This agreement is entered into under and subject to the following authority.

Economy Act approved 30 June 1932, as amended (31 U.S.C. 686).

Approved and Accepted for the Department of Defense.

Dated: December 17, 1975.

JAMES R. COWAN, M.D.,
Assistant Secretary of Defense (Health and Environment).

Approved and Accepted for the Food and Drug Administration.

Dated: December 17, 1975.

A. M. SCHMIDT, M.D.,
Commissioner of Food and Drugs.

Effective date. This Interagency Agreement became effective January 1, 1976.

Dated: January 20, 1976.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.76-2265 Filed 1-26-76;8:45 am]

National Institutes of Health

NATIONAL CANCER ADVISORY BOARD

Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the National Cancer Advisory Board Subcommittee on Centers and Construction, National Cancer Institute, on February 2, 1976, National Institutes of Health, Building 31C, Conference Room 7, which was published in the FEDERAL REGISTER on January 14, 1976, 41 FR 2107.

Dated: January 23, 1976.

THOMAS E. MALONE,
Associate Director for Extramural Research and Training.

[FR Doc.76-2505 Filed 1-26-76;9:19 am]

Office of Education

TEACHER CORPS

Closing Date for Receipt of Applications

Notice is hereby given that pursuant to the authority contained in Part B-1 of the Education Professions Development Act of 1965, as amended (79 Stat. 1255-1258 as amended (20 U.S.C. 1101-1107 a)), applications are being accepted from institutions of higher education and local educational agencies for non-competing continuation grants for the second year of "Tenth Cycle" Teacher Corps projects which began in fiscal year 1975.

In order to be assured of consideration for support, applications must be received by the U.S. Office of Education, Application Control Center on or before June 1, 1976.

A. *Applications sent by mail.* An application sent by mail should be addressed as follows: U.S. Office of Education, Application Control Center, 400 Maryland Avenue, SW., Washington, D.C. 20202, Attention: 13.489. An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than May 27, 1976 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

B. *Hand delivered applications.* An application to be hand delivered must be delivered to the U.S. Office of Education, Grant and Procurement Management Division, Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets, SW., Washington, D.C. Hand delivered applications will not be accepted by the Application Control Center after 4 p.m. Washington, D.C. time, on the closing date.

C. *Program information and forms.* Information and application forms may be obtained from the Teacher Corps, Office of the Commissioner, Office of Education, Washington, D.C. 20202.

D. *Applicable regulations.* The regulations applicable to this program are the Office of Education General Provisions Regulations (45 CFR Part 100a).

(20 U.S.C. 1101-1107a)

Dated: January 22, 1976.

(Catalog of Federal Domestic Assistance Number 13.489—Teacher Corps—Operations and Training)

T. H. BELL,
Commissioner of Education.

[FR Doc.76-2393 Filed 1-26-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-76-401]

SECRETARY OF AGRICULTURE

Delegation of Authority

Pursuant to the authority vested in me to exercise certain of the powers and authorities of the President with respect to Federal disaster assistance pursuant to section 1 of the Executive Order entitled, "Delegating Disaster Relief Functions Pursuant to the Disaster Relief Act of 1974" (E.O. 11795, 39 FR 25939, dated July 11, 1974), I hereby delegate to the Secretary of Agriculture, subject to the general policy guidance and coordination of the Administrator of the Federal Disaster Assistance Administration certain of the authorities, functions and powers granted by section 202 of the Disaster Relief Act of 1974 (hereinafter, "the Act," 88 Stat. 143, 42 U.S.C. 5121 Note) with respect to disaster warnings for those fires for which the Department of Agriculture presently provides fire warning services in support of Federal and State agencies, to wit:

1. The authority contained in section 202(b) of the Act (with the exception of the authority to direct appropriate Federal agencies to provide technical assistance) to provide technical assistance to State and local governments to ensure that timely and effective disaster warning is provided;

2. The authority contained in section 202(c) of the Act to utilize or to arrange for the use, where practicable, by Federal, State, and local agencies the facilities of any Federal communications system (other than the civil defense communications system established and maintained pursuant to section 201(c) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281(c))) for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters;

3. The authority contained in section 202(d) of the Act to enter into agreements with the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable (upon approval by the FDAA Administrator when Disaster Relief Act funds are involved) or nonreimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters; and

4. The authority to issue such rules and regulations as may be necessary and appropriate to effectuate this delegation.

(Disaster Relief Act of 1974, (42 U.S.C. 5121 Note); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)); Executive Order 11795, signed July 11, 1974, 39 FR 25939.)

Effective date. This delegation shall take effect on January 27, 1976.

CARLA A. HILLS,
Secretary of Housing and Urban Development.

I consent:
EARL L. BUTZ,
Secretary of Agriculture.

[FR Doc.76-2326 Filed 1-26-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition No. HS-76-1]

MARYLAND & PENNSYLVANIA RAILROAD CO.

Petition for Exemption From Hours of Service Act

The Maryland & Pennsylvania Railroad Company has petitioned the Federal Railroad Administration pursuant to 45 U.S.C. 64a(e) for an exemption, with respect to certain employees, from the Hours of Service Act, 45 U.S.C. Secs. 61, 62, 63, and 64.

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Attention: FRA Waiver Petition No. HS-76-1, Room 5101, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before February 27, 1976, will be considered before final action is taken on this petition. All comments received will be available for examination by interested persons during business hours in Room 5101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Issued in Washington, D.C., on January 20, 1976.

DONALD W. BENNETT,
Chief Counsel, Federal Railroad Administration.

[FR Doc.76-2268 Filed 1-26-76;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket Nos. 28723, 22859; Order 76-1-80]

FLYING TIGER LINE INC.

Order of Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22nd day of January 1976.

By tariff revisions[1] issued December 24 and marked to become effective January 23 and February 7, 1976, The Flying Tiger Line Inc. (Flying Tiger) proposes to establish bulk specific commodity rates on numerous commodities from Eastern origins to West Coast destinations.[2] The proposed rates typically apply to shipments tendered between the hours of 4:00 a.m. and 4:00 p.m. and are subject to an expiry date of August 31, 1976. Generally, the proposed rates are equal to Flying Tiger's current type FT-C or competitors' daylight general or specific commodity container rates applicable on the same commodities in the same markets, plus $1.00 per hundredweight.

A complaint requesting suspension and investigation of the rates on seafood, meat and various manufactured articles, from Cleveland to San Francisco, New York/Newark to Chicago, and Philadelphia to Los Angeles and San Francisco, has been submitted by Trans World Airlines, Inc. (TWA). TWA alleges, inter alia, that the application of a container rate to a bulk shipment raises serious questions concerning the bulk rates' reasonableness and lawfulness; the bulk rate does not reflect the inherent cost differences between bulk and container service; that the proposed rates fail in most cases to cover calendar year 1974 industry-average terminal costs or contribute only marginally to linehaul costs; and if the proposed rates are permitted to become effective, TWA will be forced to file competitive container rates reflecting the same contribution to capacity costs as the proposed bulk rates, resulting in a serious dilution of present revenues.[3]

In support of its proposal and in answer to the complaint, Flying Tiger asserts, inter alia, that most of the proposed rates are for current air shippers utilizing FT-C containers who desire to have the option of shipping in bulk depending upon their needs to satisfy various customers' shipment handling capabilities; that the flow and sometimes imbalance of FT-C container shipments has created a logistics problem which this proposal will help to alleviate; that all the proposed rates cover noncapacity costs and contribute to capacity costs; and that these rates are designed to retain a significant amount of traffic by preventing diversion to competitors' discount daylight rates, and to generate new traffic to air freight service.

[1] Revision to Airline Tariff Publishing Company, Agent, Tariff C.A.B. No. 169.

[2] See Appendix C for a complete listing of rates by market.

[3] TWA also complained against the proposed rates on printed matter from New York/Newark and Philadelphia to Chicago. All these rates except for the 500-pound weight break from New York/Newark were subsequently withdrawn by the proponent.

The proposed rates come within the scope of the Domestic Air Freight Rate Investigation (DAFRI), Docket 22859, and their lawfulness will be determined in that proceeding. The issue now before the Board is whether to suspend the rates, or to permit them to become effective pending our decision in DAFRI.

The Board has reviewed the proposed rates in the light of recent industry-average costs (including return on investment) of carrying air freight.[4] Based upon these criteria, the Board finds that all of the proposed rates at the 3,000-pound weight break (except that on refrigerated or frozen meat from Philadelphia to San Francisco) should be suspended because they do not make a sufficient contribution to capacity costs. We believe that a contribution of less than 10 percent of the capacity cost attributable to such shipments is not meaningful, and we consider such rates unreasonably low.

The remaining rates, with one exception, cover industry-average noncapacity costs and contribute more than 10% to capacity costs. The proposed rate on printed matter from New York/Newark to Chicago at the 500-pound weight break also fails to cover noncapacity costs but matches an existing rate for United Air Lines, Inc. for this commodity in the same market, and, consequently, we are permitting it to become effective.

As noted in prior orders, the Board has traditionally granted the carriers considerable flexibility and discretion with respect to specific commodity rates.[5] However, with cargo service costs increasing, we have concluded that pending final decision in DAFRI, our historical approach to specific commodity rate filings should require some minimum contribution to capacity costs. For interim purposes we believe the ten percent standard is reasonable and one which should promote stability in the rate structure.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof:

It is ordered, that:

1. Pending hearing and decision by the Board, the rates, and provisions described in Appendix A below are suspended, and their use deferred to and including April 21, 1976; and the rates and provisions described in Appendix B hereto are suspended, and their use deferred to and including May 6, 1976, unless otherwise ordered by the Board, and that no change be made therein during the period of suspension, except by order or special permission of the Board;

[4] For present purposes, the costs utilized are based on those presented in the Bureau of Economics' brief to the Board which are essentially consistent in methodology with the Initial Decision in DAFRI. Further, those calendar year 1974 costs have been subjected to interim adjustments to reflect the levels prevailing during the nine-month period ended September 30, 1975.

[5] See the Board's decision in United Air Lines, Inc., Specific Commodity Rates on Periodicals, Floral Products, and Seafood, Docket 22157, Order 72-11-78, November 20, 1972.

2. Except to the extent granted herein, the complaint of Trans World Airlines, Inc., in Docket 28723 is hereby dismissed; and

3. Copies of this order will be filed with the tariff and served upon The Flying Tiger Line Inc. and Trans World Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary*.

APPENDIX A; TARIFF C.A.B. No. 169, ISSUED BY AIRLINE TARIFF PUBLISHING COMPANY, AGENT

1. On 28th Revised Page 624-B, the rate stated to apply on SCR 2741000 from Philadelphia to Los Angeles.

2. On 8th Revised Page 624-C, the rates stated to apply on SCR 3566946 from Philadelphia to Los Angeles; SCR 2471000 from Philadelphia to San Francisco/Oakland; and SCR 2012000, SCR 2081000, and SCR 2499866 from Philadelphia to Seattle/Tacoma.

APPENDIX B; TARIFF C.A.B. No. 169, ISSUED BY AIRLINE TARIFF PUBLISHING COMPANY, AGENT

1. On 41st Revised Page 618-B, the rate stated to apply on SCR 2081000, from Chicago to Portland, Oregon.

2. On 8th Revised Page 618-C, the rates stated to apply on SCR 3315239, SCR 3429833, and SCR 3714460, subject to a minimum weight of 3,000 pounds, from Cleveland to San Francisco/Oakland.

3. On 28th Revised Page 624-B, the rates stated to apply on SCR 0912210, SCR 2012000, SCR 2081000, and SCR 2499866, subject to a minimum weight of 3,000 pounds, from Philadelphia to Los Angeles.

4. On 8th Revised Page 624-C, the rates stated to apply on SCR 3600000 and SCR 3714000 from Philadelphia to Los Angeles; and SCR 2081000, SCR 2499866, SCR 3600000 and SCR 3714000 from Philadelphia to San Francisco/Oakland.

APPENDIX C—*Specific commodity description*

Market	SCR item No.	Description
CLE to SFO	3315239	Metal nuts, bolts, nails, and screws.
	3429333	Key duplicating machines, etc.
	3714460	Automobile parts and related chemicals.
PHL to LAX	0191605	Mushrooms and mushroom spawn.
	2200000	Cloth.
	0912210	Clams in shell and fresh oysters.
	2012000	Meat, refrigerated or frozen.
	2081000	Alcoholic beverages.
	2499866	Wire on reels or in cartons.
	3600000	Electrical machinery and parts.
	3714000	Motor vehicle parts.
	2649100	Stationery.
	2741000	Printed matter.
	3566946	Machinery, namely, speed reducers.
PHL to SFO	0191605	Mushrooms and mushroom spawn.
	2200000	Cloth.
	2012000	Meat, refrigerated or frozen.
	2081000	Alcoholic beverages.
	2499866	Wire on reels or in cartons.
	3600000	Electrical machinery, etc.
	3714000	Motor vehicle parts.
	2649100	Stationery.
	2741000	Printed matter.
NYC to CHI	2741000	Do.
CHI to PDX	2081000	Alcoholic beverages.
PHL to SEA/TAK	2012000	Meat, refrigerated or frozen.
	2081000	Alcoholic beverages.
	2499866	Wire on reels or in cartons.

[FR Doc.76-2355 Filed 1-26-76;8:45 am]

[Docket No. 28364]

KINGSTON AIR SERVICES, LTD.

Prehearing Conference and Hearing Regarding Foreign Air Carrier Permit (Canada)

Notice is hereby given that a prehearing conference in this proceeding is assigned to be held on February 18, 1976, at 9:30 a.m. (local time), in Room 1003, Hearing Room C, North Universal Building, 1875 Connecticut Avenue, NW., Washington, D.C., before Administrative Law Judge Richard V. Backley.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before February 9, 1976.

Ordinary transcript will be adequate for the proper conduct of this proceeding.

Dated at Washington, D.C., January 22, 1976.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.76-2353 Filed 1-26-76;8:45 am]

[Docket Nos. 28129, 26342; Order 76-1-78]

TACA INTERNATIONAL AIRLINES, S.A.

Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22d day of January 1976.

TACA International Airlines, S.A. (TACA), an El Salvadoran carrier, holds a foreign air carrier permit[1] authorizing: (a) foreign air transportation with respect to persons, property, and mail between the terminal point San Salvador, El Salvador, the intermediate points Guatemala City, Guatemala, San Pedro Sula, Honduras, and Belize City, Honduras (Belize), and the terminal point New Orleans, Louisiana; and between the terminal point San Salvador, El Salvador, the intermediate points San Pedro Sula, Honduras, and Belize City, British Honduras (Belize), and the terminal point Miami, Florida; and (b) the performance of charter trips in foreign air transportation pursuant to Part 212 of the Board's Economic Regulations.

By application filed on July 31, 1975, in Docket 28129, TACA requests a show cause order to amend its permit so as to authorize it to engage in foreign air transportation to and from the additional intermediate point Merida, Mexico. TACA requests that this additional authority be granted for a temporary period of six months or until a U.S. air carrier inaugurates scheduled services between New Orleans and Merida pursuant to authority from the Civil Aeronautics Board, whichever is longer.

TACA has also filed, on January 24, 1974, (Docket 26342) an application for permanent amendment of its foreign air carrier permit to authorize service to Merida, and a motion for expedited hearing of its request for permanent authority, dated March 3, 1975.

Pan American World Airways, Inc. filed an answer to TACA's application for temporary authority, taking no position on whether a show cause order should be issued, but requesting that any grant of authority to serve Merida be limited to a period of 180 days. Pan American advanced this modification in order to avoid the possible application of the automatic extension provisions of section 558(c) of the Administrative Procedure Act, formerly section 9(b), to any renewal application filed by TACA.

At the present time no U.S. air carrier serves the New Orleans-Merida market,[2] but six U.S. carriers[3] have applied for authority to serve Merida from various Gulf Coast cities. The only existing New Orleans-Merida direct service is being provided by a Guatemalan carrier which operates five round-trip flights per week. TACA notes that the process of selecting another U.S. carrier to serve Merida is likely to be protracted. TACA proposes to provide service to Merida on a temporary interim basis pending the inauguration of such service by a U.S.-flag carrier.

On the basis of the foregoing, it is tentatively found and concluded that:

(a) In view of the absence of air service between New Orleans and Merida, Mexico, by any U.S. carrier, it is in the public interest to amend the foreign air carrier permit held by TACA International Airlines, S.A. to authorize that carrier to serve Merida as an additional intermediate point on its authorized flights between the terminal point San Salvador, El Salvador, and the terminal point New Orleans, Louisiana;

(b) The authority to serve Merida should be temporary and shall expire one year from the effective date of this order or whenever a U.S. carrier commences scheduled service between New Orleans and Merida, whichever is sooner; service to Merida under the temporary authority granted herein shall not be considered to be activity of a continuing nature as that term is used in section 558(c) of the Administrative Procedure Act and will not be automatically extended by the timely filing of a renewal application;

(c) TACA is fit, willing, and able to provide the air transportation proposed in its application and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board;[4]

(d) The permit granted to TACA International Airlines, S.A., should be subject to all of the terms, conditions, and limitations set forth in the specimen foreign air carrier permit attached to this order, and to such other reasonable terms, conditions, and limitations which may, from time to time, be prescribed by the Board as required in the public interest;[5]

(e) TACA's application presents no questions of fact or law which will require a full evidentiary hearing for their resolution;

(f) TACA's motion to expedite the processing in Docket 26342 (TACA's application for permanent authority to serve Merida) should be denied, as the award of temporary authority proposed herein will obviate the need for expedited treatment of that application.

Accordingly, it is ordered, that:

1. All interested persons be and they hereby are directed to show cause why the Board should not make final the tentative findings and conclusions herein, and why an amended foreign air carrier permit in the form of the specimen permit attached to this order should not, subject to the approval of the President pursuant to section 801 of the Act, be issued to TACA International Airlines, S.A.;

2. Any interested person having objection to the issuance of an order making final the tentative findings and conclusions herein and issuing said permit shall, within 21 days after the adoption of this order, file with the Board and serve upon the persons named in paragraph 5, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data and such evidence expected to be relied upon in support of the statement of objections. If an evidentiary hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, further consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board: *Provided,* That the Board may proceed to enter an order in accordance with the tentative findings and conclusions herein if it determines that there are no factual is-

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[1] Order 73-5-142, approved May 29, 1973.

[2] Pan American is the U.S. air carrier certificated to serve the New Orleans-Merida market, but was authorized to suspend service between these two points by Order 75-4-16 of April 2, 1975.

[3] Texas International Airlines, Inc., National Airlines, Inc., Eastern Air Lines, Inc., United Air Lines, Inc., Braniff Airways, Inc., and Continental Air Lines, Inc.

[4] In approving the renewal of TACA's authority to provide service to New Orleans and Miami, the Board found that the carrier met the fitness standards of the Act and that the services proposed were in the public interest. Order 73-5-142, approved May 29, 1973.

[5] By Order to Show Cause, Order 74-3-71, March 15, 1974, (Docket 26509) the Board proposed major revisions to Part 212 of its Economic Regulations. The authority granted here will be subject to any revisions to Part 212 ultimately adopted in Docket 26509.

sues present that warrant the holding of an evidentiary hearing; [6]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. This order shall be served upon TACA International Airlines, S.A., Pan American World Airways, Inc., Eastern Air Lines, Inc., United Air Lines, Inc., Texas International Airlines, Inc., National Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., and the Ambassador of El Salvador in Washington, D.C..

This order will be published in the FEDERAL REGISTER and will be transmitted to the President.

By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[Specimen Permit]

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

TACA INTERNATIONAL AIRLINES, S.A.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons, property, and mail as follows:

1. Between the terminal point San Salvador, El Salvador, the intermediate points Guatemala City, Guatemala, San Pedro Sula, Honduras, Belize City, British Honduras (Belize), and Merida, Mexico, and the terminal point New Orleans, Louisiana; and

2. Between the terminal point San Salvador, El Salvador, the intermediate points San Pedro Sula, Honduras, and Belize City, British Honduras (Belize), and the terminal point Miami, Florida.

The holder hereof shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

This permit shall be subject to the condition that the holder shall serve the terminal points Miami, Florida, and New Orleans, Louisiana, only on flights that serve San Salvador, El Salvador.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of El Salvador for Salvadoran international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and El Salvador shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic conditions the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

The exercise of the privileges granted hereby shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on _____ and shall terminate on May 29, 1978, except that it shall be subject to termination at any time if the authority to conduct flight operations to and from El Salvador granted by the Government of El Salvador to any air carrier designated by the United States is canceled or restricted: *Provided, however,* That if in the aforesaid period during which this permit shall be effective the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and El Salvador are or shall become parties, then and in that event, this permit is continued in effect during the period provided in such treaty, convention, or agreement; *Provided further,* That, with respect to Merida, Mexico, the authority granted herein shall expire one year from the effective date of this permit or whenever a United States carrier inaugurates scheduled service between New Orleans and Merida, whichever first occurs.[1]

In witness whereof, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the _____

[SEAL] _____, *Secretary.*

Issuance of this permit to the holder approved by the President of the United States on _____ in Order _____.

[FR Doc.76-2356 Filed 1-26-76;8:45 am]

[6] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

[1] The amendment authorizing service to Merida is a temporary authorization and does not refer to an activity of a continuing nature within the meaning of section 558(c) of the Administrative Procedure Act, 5 U.S.C. 558(c).

[Order 76-1-82; Dockets 28778; 28335, and 28718]

TEXAS INTERNATIONAL AIRLINES, INC., AND TRANS WORLD AIRLINES, INC.

Order for Amendment of Certificates of Public Convenience and Necessity

On September 22, 1975, Texas International Airlines (TXIA) filed an application for nonstop authority between Dallas/Ft. Worth, and Kansas City. Concurrently therewith, TXIA moved the Board to set its application for immediate hearing. On December 31, 1975, Trans World Airlines, Inc. (TWA) also filed an application for Dallas/Ft. Worth authority along with a motion to consolidate its application with that of TXIA.[1]

In support of its motion, TXIA alleges, inter alia, that Braniff Airways is the only carrier currently providing nonstop service in the Dallas/Ft. Worth-Kansas City market; that in 1969, the Board found that this market was large, fast growing and required competition and awarded competitive nonstop authority to Frontier in the Gulf States-Midwest Points Service Investigation (Order 69-5-25, May 7, 1969);[2] that Frontier has failed to provide the services it proposed and has had no meaningful service in the market since January of 1975; that Dallas/Ft. Worth-Kansas City is the 8th largest monopoly market in the domestic air transportation system with 181,000 passengers in 1974; that grant of this application will permit it to serve almost 100,000 new passengers in the first year of operation; that such service will bring first competitive service to the Houston-San Antonio and Corpus Christi-Kansas City markets, and provide first single-plane and single-carrier service for numerous TXIA points throughout the southeast.

In addition, TXIA alleges that it is the only logical carrier to compete in this market with Braniff; that the authority will enable TXIA to realize over $1.5 million in operating profit and $50,000 after return and tax in the first year of operation; and that TXIA's proposed service will cause only minimal diversion from Braniff.

The Kansas City Parties[3] filed an answer in support of TXIA's motion for immediate hearing.

Answers in opposition to TXIA's request were filed by Braniff and Frontier. Braniff argues that there is no need for

[1] TXIA is not currently certificated at Kansas City and TWA is not certificated to serve Dallas/Ft. Worth. By their applications, both carriers are requesting the Board to amend their certificates so as to add a segment between Dallas/Ft. Worth and Kansas City.

[2] The Board assumed when it awarded the route to Frontier, that it would offer three (3) nonstop round trips in this market in order to compete effectively with Braniff and to stimulate traffic growth (opinion, page 42). In point of fact, Frontier's schedules in this market have varied between only one and two nonstop round trips since it instituted service in 1969.

[3] The City and Chamber of Commerce of Kansas City.

additional nonstop authority; that if such a need existed, Frontier would be providing the competitive service; that TXIA's forecast as to backup support and traffic generation is questionable at best; that TXIA's schedules will not meaningfully improve the nonstop service in this market considering Braniff's schedule.[4] Frontier alleges that TXIA has inaccurately stated its historic service in the market; that Braniff's service is more than adequate to serve the 500 passengers per day in the market; that numerous other monopoly markets which are significantly larger than the market at issue receive considerably less nonstop service; that TXIA's traffic and financial forecasts are overstated and not supported by historical fact; and that the Board declined to set for early hearing the applications of American and United to compete with Western between Salt Lake City and Los Angeles under similar circumstances.[5]

Upon consideration of the pleadings and all the relevant facts, we have decided to institute an investigation, to be set down for hearing, for the purpose of considering the need for competitive nonstop service in the Dallas/Ft. Worth-Kansas City market.[6] We will also place in issue the question of whether Frontier's Dallas/Ft. Worth-Kansas City nonstop authority should be deleted, suspended, restricted or otherwise modified pursuant to section 401(g) of the Act. The Dallas/Ft. Worth-Kansas City market generated over 176,770 true O&D plus connecting passengers in fiscal 1974.[7] In terms of nonstop flow, it is the largest market in the nation lacking competitive nonstop service. Irrespective of the service that Braniff provides, the fact still remains that the Board determined in the Gulf States Case, supra, that competition was warranted. Since that finding, the market has grown at an average annual percentage rate in excess of 5% and Frontier has failed to provide effective competition.

However, while we are setting this matter for hearing, we do not mean to imply that an award will necessarily follow. After a full evidentiary hearing, the evidence of record could indicate that a new carrier would be unable to effectively and/or profitably compete with Braniff. Nevertheless, we believe that TXIA has presented compelling arguments, which should be decided in a formal hearing.[8]

Finally, TXIA and TWA have not submitted sufficient information for us to determine the environmental consequences of their certificate amendment applications at this time. Therefore, we will require TXIA and TWA to file the information set forth in Part 312 of the Board's Procedural Regulations. We will allow, TXIA, TWA and all other carriers filing applications in this proceeding, 30 days from the date of adoption of this order to file their environmental evaluations.

Accordingly, it is ordered, That:

1. A proceeding to be known as the Additional Dallas/Ft. Worth-Kansas City Nonstop Service Case, Docket 28778, be and hereby is instituted and shall be set down for hearing before an Administrative Law Judge of the Board at a time and place hereinafter designated, as the orderly administration of the Board's docket permits;

2. The proceeding set for hearing in paragraph 1, above, shall include consideration of the following issues:

(a) Do the public convenience and necessity require the certification of an air carrier or air carriers to engage in additional nonstop air transportation between Dallas/Ft. Worth, and Kansas City?

(b) If the answer to (a) is affirmative, which carrier(s) should be authorized to engage in such transportation?

(c) What conditions, if any, should be placed upon the operations of such carrier(s)?

(d) Do the public convenience and necessity require the alteration, amendment, modification or suspension of the certificate of Frontier Airlines, Inc., so as to prohibit the operation of nonstop service between the points Dallas/Ft. Worth and Kansas City?

3. Any authority awarded in this proceeding shall be without eligibility for subsidy;

4. The applications of Texas International Airlines, Inc., in Docket 28335, and Trans World Airlines, Inc., in Docket 28718, be and they hereby are consolidated with the proceeding instituted by paragraph (1) above;

5. The motion of Texas International Airlines, Inc. for immediate hearing be and it hereby is granted;

6. Applications, motions to consolidate, and petitions for reconsideration of this order shall be filed within twenty (20) days of the date of adoption of this order and answers thereto shall be filed within ten (10) days thereafter; and

7. Texas International Airlines, Inc., Trans World Airlines, Inc., and all other carriers filing applications in this proceeding shall file environmental evaluations pursuant to § 312.12 of the Board's Procedural Regulations within 30 days of the date of adoption of this order.[9]

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary*.

[FR Doc.76-2354 Filed 1-26-76;8:45 am]

[4] Braniff currently provides 32 one-way flights a day in the Dallas/Ft. Worth-Kansas City market, including 14 nonstop flights per day. OAG, December 15, 1975.

[5] Docket 24795, Order 73-3-28, March 9, 1973, p. 3.

[6] In addition, we will grant TWA's motion to consolidate its application in Docket 28718 with the proceeding instituted herein.

[7] CAB O&D Survey, fiscal year 1974.

[8] We do not agree with Frontier's suggestion that the Board's 1973 result with respect to the Salt Lake City-Los Angeles market should be followed in the instant case.

[9] To the extent the above-established procedure does not comply with Part 312 of the Board's Procedural Regulations, we hereby waive the requirement that applications contain an environmental evaluation for those carriers requesting consolidation with this proceeding.

ENVIRONMENTAL PROTECTION AGENCY

[FRL 482-4]

AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

Designations

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7044, February 18, 1975), has designated two equivalent methods for the measurement of ambient concentrations of sulfur dioxide. The first is an automated method (analyzer) which utilizes a measurement principle based on "second derivative spectroscopy." The second is an automated analyzer utilizing the "flame photometric detection" measurement principle. The methods are:

(1) EQSA-1275-005, Lear Siegler model "SM1000 SO_2 Ambient Monitor," operated on the 0-0.5 ppm range, at a wavelength of 299.5 nm, and with the "slow" (300 second) response time. This method is available from Lear Siegler Inc., Environmental Technology Division, 74 Inverness Drive East, Englewood, Colorado 80110.

(2) EQSA-1275-006, "Meloy Model SA185-2A Sulfur Dioxide Analyzer," operated with a scale range of 0-0.5 ppm, with or without any of the following options:

S-1, Linearized Output
S-2, Modified Recorder Output
S-6A, Re-Ignite Timer Circuit
S-7, Press to Read
S-11A, Manual Zero and Span
S-11B, Automatic Zero and Span
S-14, Output Booster Amplifier
S-18, Rack Mount Conversion
S-18A, Rack Mount Conversion

This method is available from Meloy Laboratories, Inc., Instruments and Systems Division, 6715 Electronic Drive, Springfield, Virginia 22151.

A test analyzer representative of each of these methods has been tested by its manufacturer, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the respective applicants, EPA has determined, in accordance with Part 53, that these methods should be designated as equivalent methods. The information submitted by the applicants will be kept on file at the address shown below and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As equivalent methods, either of these methods is acceptable for use by States and other control agencies for purposes of § 51.17(a) of 40 CFR Part 51 ("Requirements for Preparation, Adoption, and Submittal of Implementation

Plans") as amended on February 18, 1975 (40 FR 7042). For such use, each method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of methods above). Vendor modification of a designated method used for purposes of § 51.17(a) are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users were proposed on February 18, 1975 (40 FR 7064) and are expected to be promulgated shortly.

In general, each designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are: (1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser, (2) the aanlyzer must generate no unreasonable hazard to operators or to the environment, and (3) the analyzer must function within the limits of the performance specifications given in Table B-1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation or instruction manual. Certain additional conditions of designation were proposed on February 18, 1975 (40 FR 7064), and are expected to be promulgated shortly. Aside from occasional breakdowns or malfunctions, consistent or repeated non-compliance with any of these conditions should be reported to: Director, Environmental Monitoring and Support Laboratory, Department E (MD-76), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these equivalent methods will provide assistance to the States in establishing and operating their air quality surveillance systems under 40 CFR 51.17(a). Additional information concerning this action may be obtained by writing to the address given above.

WILSON K. TALLEY,
Assistant Administrator for Research and Development.

JANUARY 20, 1976.

[FR Doc.76-2234 Filed 1-26-76;8:45 am]

[OPP-50058; FRL 482-7]

HOFFMANN-LA ROCHE, INC.

Issuance of Experimental Use Permit

Pursuant to section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136), an experimental use permit has been issued to Hoffmann-La Roche, Inc., Nutley, New Jersey 07110. Such permit is in accordance with, and subject to, the provisions of 40 CFR Part 172; Part 172 was published in the FEDERAL REGISTER on April 30, 1975 (40 FR 18780), and defines EPA procedures with respect to the use of pesticides for experimental purposes.

This experimental use permit (No. 35977-EUP-1) allows the use as a herbicide of 198 pounds of the sodium salt of 2,3:4,6 - Bis - O-(1 - methylethylidene-α-L-xylo-2-hexulofuranosonic acid for chemical pinching of ornamentals (evergreen and deciduous azaleas, begonias, fuchsias, etc., grown in greenhouse and field nurseries) and as a plant growth retardant on hedges, shrubs, and other ornamentals in outdoor locations. A total of 17.5 acres is involved; the program is authorized only in the States of Alabama, California, Florida, New Jersey, North Carolina, Ohio, Oregon, and Washington. The experimental use permit is effective from December 19, 1975 to December 19 1976.

Interested parties wishing to review the experimental use permit are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St., S.W., Washington, D.C. 20460. It is suggested that such interested persons call 202/755-4851 before visiting the EPA Headquarters office, so that the appropriate permit may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: January 22, 1976.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.76-2387 Filed 1-27-76;8:45 am]

[FRL 483-2]

NATIONAL DRINKING WATER ADVISORY COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the National Drinking Water Advisory Council established under Pub. L. 93-523, the "Safe Drinking Water Act," will be held at 9:00 a.m. on February 12, 1976 and at 8:30 a.m. on February 13, 1976 in the EPA Regional Conference Room B, Eleventh Floor, 1600 Patterson Street, Dallas, Texas 75201.

The purpose of the meeting will be to communicate with local citizens, state and local agencies, and the regional program people of the EPA relative to matters relating to Pub. L. 93-523, the "Safe Drinking Water Act." Specific items to be discussed will be health effects research, laboratory certification, training programs, data management and underground injection control regulations.

The meeting will be open to the public. The Council encourages the hearing of outside statements and allocates a portion of time for public participation. Any outside parties interested in presenting an oral statement should petition the Council in writing. The petition should include the general topic of proposed statement and the petitioner's telephone number.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at Council meeting.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement should contact the Executive Secretary, Patrick Tobin, Office of Water Supply (WH-550), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The telephone number is: Area Code 202/426-8847.

A. W. BREIDENBACH,
Assistant Administrator for Water and Hazardous Materials.

JANUARY 21, 1976.

[FR Doc.76-2452 Filed 1-26-76;8:45 am]

[FRL 482-2; OPP-240004]

STATES OF NEBRASKA AND NEW YORK

Approval of Requests for Interim Certification To Register Pesticides To Meet "Special Local Needs"

On July 3, 1975, final regulations for the registration, reregistration, and classification of pesticides pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136), were published in the FEDERAL REGISTER (40 FR 28241). These regulations became effective August 4, 1975. Since that date, States have been prohibited from issuing new registrations for pesticide products or uses of pesticide products which are not registered by the Environmental Protection Agency (EPA), except pursuant to certification from the Administrator in accordance with section 24(c) of FIFRA.

On September 3, 1975, proposed regulations for State Registration of Pesticides to Meet Special Local Needs under section 24(c), FIFRA, were published in the FEDERAL REGISTER (40 FR 45038). Since it did not prove possible to promulgate final section 24(c) regulations prior to the effective date of the FIFRA section 3 regulations, some interruption in the authority of States to register pesticides has occurred. In order to prevent further disruption of State registration programs (particularly in relation to minor uses), a procedure has been established by which States may request interim certification to register pesticides to meet special local needs until such time as the final section 24(c) regulations are promulgated. If such a request is granted, a State may register pesticides subject to the terms of the certification and other limitations set out in the Preamble to the proposed regulations. Interim certification will expire if the State has not

submitted a plan pursuant to the final section 24(c) regulations within 60 days after the effective date of these regulations, or, if such a plan is submitted and it is disapproved by the Administrator, on the effective date of the Administrator's disapproval.

A state may request interim certification to register pesticides to meet special local needs at any time by having the Governor or Chief Executive Officer or their designee submit a request in writing to the Administrator. The request shall satisfy the requirements set out in the FEDERAL REGISTER announcement of the Interim Certification program (40 FR 40542), and the statutory standard set forth in section 24(c) of FIFRA.

The FEDERAL REGISTER announcement of the Interim Certification program provides that the Administrator shall notify the State of his approval or denial of a request for Interim Certification and publish notice of approval or denial in the FEDERAL REGISTER. The announcement further states that since the Agency expects Interim Certification to be of limited duration, it will not solicit public comment with respect to requests for Interim Certification. Adequate opportunity for public comment on State plans submitted pursuant to final section 24(c) regulations is provided for in proposed § 162.158(c).

The Agency has received Requests for Interim Certification to register pesticides to meet special local needs (Request(s)) from the States of Nebraska and New York. After reviewing the Requests, the Agency found that they satisfy the requirements set forth in the FEDERAL REGISTER announcement, and that they demonstrate that each of the States is capable of exercising adequate controls to assure that special local needs registrations it issues pursuant to Interim Certification will be in accord with the purposes of FIFRA.

Accordingly, notice is hereby given that the EPA has approved Requests for Interim Certification from the States of Nebraska and New York as described below, subject to the terms set forth in the FEDERAL REGISTER document of September 3, 1975.

NEBRASKA AND NEW YORK

The Nebraska and New York Requests for Interim Certification sought authority to register "new products," as that term is defined in § 162.152(g) of the proposed regulations, to amend EPA registrations which involve "changed use patterns," as that term is defined in § 162.152(c), and to amend EPA registrations which do not involve changed use patterns. The Agency has found that the specific requirements of the Interim Certification program are satisfied in the Requests. Procedures for product hazard review and efficacy determination are part of the States' registration programs; these procedures are adequate to assure that special local needs registrations issued by these States will be in accord with the purposes of FIFRA. The State agencies which have been designated responsible for issuance of such registrations are, respectively, the Nebraska Department of Agriculture, and the New York State Department of Environmental Conservation. These Agencies were notified on January 12, 1976 that their requests had been approved.

Copies of the Nebraska and New York Requests for Interim Certification, along with letters reflecting the Agency's decision to approve the Requests, are available for public inspection at the following locations:

Federal Register Section, Technical Services, Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M St. SW., Washington, D.C. 20460.

Pesticide Branch, Hazardous Materials Control Division, EPA, 1735 Baltimore Avenue, Kansas City, Missouri 64108. (*Nebraska Request only*).

Pesticide Branch, Hazardous Materials Control Division, EPA, 26 Federal Plaza, Room 1005, New York, New York 10007. (*New York Request only*).

Dated: January 20, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.76-2233 Filed 1-26-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 20567-20569; File No. BPH-8905, etc.; FCC 76R-10]

ALEXANDER S. KLEIN, JR., ET AL.

Memorandum Opinion and Order Enlarging Issues

In the matter of applications of Alexander S. Klein, Jr., Media, Pennsylvania (Docket No. 20567; File No. BPH-8905); Greater Media Radio Co., Media, Pennsylvania (Docket No. 20568; File No. BPH-9011); Roberts Broadcasting Corp., Media, Pennsylvania (Docket No. 20569; File No. BPH-9156); for construction permits.

1. This proceeding involves the mutually exclusive applications of Alexander S. Klein, Jr. (Klein), Greater Media Radio Company (Greater Media), and Roberts Broadcasting Corporation (Roberts) for a new FM broadcast station in Media, Pennsylvania. The applications were designated for consolidated hearing by Order, 40 FR 36805, published August 22, 1975. Now before the Review Board is a motion to enlarge issues, filed September 16, 1975, by Klein, seeking the addition of numerous issues against Greater Media,[1] including financial and § 1.613 issues.[2] We will treat these issues in the order presented by movant.

2. *Rule 1.615 Issue.* Noting that Daniel Lerner, president and majority stockholder of Greater Media, is a twenty-five percent shareholder in WLLH, Inc., licensee of Stations WLLH and WSSH (FM), Lowell, Massachusetts, movant seeks an issue predicated on WLLH, Inc.'s failure to include in its Ownership Report a letter which movant alleges is required to be filed therein by § 1.615(a)(4)(i) of the Commission's Rules.[3] The requested issue will be denied. The Board agrees with the Broadcast Bureau that an issue is not warranted since the omitted information does not appear to be of major importance and there is no apparent motive to conceal. See paragraph 4 of our earlier Memorandum Opinion and Order, FCC 76R-6, released January 9, 1976, in which we denied a request for a Rule 1.613 issue against Greater Media predicated on its failure to file the same letter. (See note 2, supra.)

3. *Section 1.514 and Misrepresentation Issues.* In support of its requested § 1.514 issue, movant alleges that Greater Media failed to report in an amendment to its application that Lerner had an interest in another application then pending before the Commission. According to movant, WLLH, Inc. filed renewal applications for Stations WLLH and WSSH (FM) on or about December 28, 1974.[4] Thereafter, on January 10, 1975, movant alleges, Greater Media filed an amendment to its application indicating in

[1] Also before the Board are the following related pleadings: (a) Opposition, filed September 29, 1975, by Greater Media; (b) supplemental service, filed September 30, 1975, by Greater Media; (c) comments, filed October 1, 1975, by the Broadcast Bureau; (d) reply to (c), filed October 14, 1975, by Klein; (e) request for late acceptance, filed September 16, 1975, by Klein; (f) opposition to (e), filed September 29, 1975, by Greater Media; and (g) reply to (a) and (f), filed October 9, 1975, by Klein. Because the motion to enlarge issues raises serious public interest questions which may affect Greater Media's basic qualifications, the Board will consider the merits of movant's requests. See The Edgefield-Saluda Radio Co. (WJES), 5 FCC 2d 148, 8 RR 2d 611 (1966).

[2] Essentially, the allegations underlying the requested Rule 1.613 and financial issues have been adequately disposed of in the Board's Memorandum Opinion and Order, FCC 76R-6, released January 9, 1976. There, the Board denied a petition to enlarge issues filed by Roberts seeking Rule 1.613 and financial issues against Greater Media. The only new financial allegations herein, i.e., those relating to cost estimates, are not sufficient to support enlargement of the issues since Greater Media's cost estimates are neither unreasonable on their face nor challenged by specific facts based on affidavits from persons with personal knowledge thereof. See California Stereo, Inc., 39 FCC 2d 401, 26 RR 2d 887 (1973). Merely showing that an applicant's cost estimates are lower than movant's does not, in itself, mean that the estimates are unrealistically low. See Catamount Broadcasters, Inc., FCC 75R-427, released November 20, 1975.

[3] Movant alleges that the letter, which reflects that an offer has been made to purchase Lerner's interests in WLLH, Inc., was required by § 1.613 to be filed with the Commission. Rule 1.615(a)(4)(i) provides in pertinent part that a licensee must file in its Ownership Report "[a] list of all contracts still in effect required to be filed with the Commission by § 1.613. * * *."

[4] The Commission files reflect that the applications for renewal of license were filed on November 25, 1974, and granted on May 8, 1975.

Paragraph 19, Section II,[5] that no party to the application had any other application then pending before the Commission. Conversely, movant further alleges, the license renewal applications of WLLH and WSSH (FM) never reflected that Greater Media had filed an application for the proposed FM station.[6] Movant argues that in light of the Commission's questions regarding WLLH and WSSH (FM)'s commercial policies (see over-commercialization issue, infra), the above omissions raise questions concerning whether the cross-references were deliberately omitted to avoid Commission inquiry into the Greater Media application. The Broadcast Bureau opposes addition of the issues.

4. The Review Board will deny the requested issues. Although the amendment to Greater Media's application should have noted that the renewal applications were then pending before the Commission and, conversely, the WLLH and WSSH(FM) renewal applications should have indicated Lerner's interest in Greater Media, the Board is of the view that such omissions do not warrant either a § 1.514 or a misrepresentation issue.[7] Aside from the fact that the allegations concerning the motives behind the omissions are conjectural,[8] and thus fail to comport with § 1.229(c) of the Commission's rules, the omission in Greater Media's amendment is not of decisional significance since Greater Media's application clearly reflects Lerner's twenty-five percent interest in Stations WLLH and WSSH(FM), and there is no apparent motive to conceal this fact. See Gilbert Broadcasting Corp., 55 FCC 2d 579, 581, 34 RR 2d 1673, 1678 (1975). With respect to the renewal applications of Stations WLLH and WSSH (FM), movant's allegations are too remote from the instant inquiry since the Commission has granted the applications, the omissions do not appear to be of major importance, and there is no apparent motive or intent to deceive. Gilbert Broadcasting Corp, supra, 55 FCC 2d at 585, 34 RR 2d at 1682.

5. *Section 1.526 Issue.* In support of its requested issue, movant alleges that Alexander Klein, Jr., and his counsel inspected the local public files of WLLH, Inc. on September 4, 1975, and found the following information missing: (a) A copy of The Public and Broadcasting—A Procedural Manual; (b) the Commission's letter granting the 1974 license renewal applications of WLLH and WSSH(FM); (c) the 1974 composite week program and transmitter logs; (d) rate cards; and (e) the contour coverage maps for WLLH and WSSH. Movant acknowledges that the procedural manual was provided several hours later and that the contour maps for WLLH were ultimately provided. In addition, movant alleges that "[i]n numerous instances materials were provided only upon specific request by Counsel for Mr. Klein for a specific document." Attached to the petition is a supporting affidavit by Klein.

6. The requested issue will be denied. As correctly noted by the Broadcast Bureau, § 1.526 of the Commission's Rules does not require a licensee of an AM or FM station to file program and transmitter logs or rate cards in its public file: Thus, of the items mentioned, only the procedural manual, contour maps, and Commission letter were required to be in WLLH, Inc.'s public file and, of this information, the manual and maps for WLLH were furnished shortly following counsel's request. Although the immediate unavailability of certain of the above documents technically violated Rule 1.526, the Board does not believe that any inquiry concerning this matter would be fruitful since movant has not shown that the omitted information is of any importance or that there is an apparent motive to conceal. See Gilbert Broadcasting Corp., supra. In addition, although it would be inconsistent with the purposes underlying § 1.526 for a licensee to require identification of a particular document before a member of the public is permitted to inspect it, see Licensee Obligations Regarding Inspection of Public Records, 23 RR 2d 1588 (1971), movant's allegations regarding this matter are not specific enough to support enlargement of the issues. See § 1.229(c) of the Commission's Rules.

7. *Over-commercialization Issue.* In support of an over-commercialization issue, movant alleges that the Commission deferred granting the 1971 and 1974 license renewal applications of Stations WLLH and WSSH(FM) pending response to questions concerning the licensee's commercial policies. Movant further alleges that in 1974 the Complaints and Compliance Division of the Commission examined the program logs of WLLH for various dates in November and December 1974 and found that over-commercialization occurred frequently. Movant urges that the Board frame an issue sufficiently broad to permit inquiry into the extent of Daniel Lerner's involvement in the operation of both stations. Klein's request for such an issue will be denied. In the Board's view, movant has not advanced a sufficient basis on which to add an issue. A perusal of the Commission's records reflects that the Commission sent the licensee an inquiry on March 25, 1975, requesting certain informtaion concerning the renewal applications of WLLH and WSSH(FM), including information as to the licensee's commercial policies. After receiving a response, the Commission granted both applications on May 8, 1975, for the full license terms. Under these circumstances, the Board concurs with the Broadcast Bureau that the Commission has considered the licensee's commercial policies and determined that WLLH, Inc., is qualified to remain a licensee in good standing. Accordingly, no reason for inquiry into Daniel Lerner's possible involvement in WLLH, Inc.'s commercial practices is apparent.

8. *Misrepresentation Issue.* Movant contends that a misrepresentation issue is warranted based on a representation in a 1963 application for transfer of control of Stations WLLH and WSSH(FM), Lowell, Massachusetts, that Daniel Lerner would move to Lowell and devote his full time to the opertaion of the stations. According to movant, Lerner did not keep this commitment for any significant period of time. Movant also argues that a question exists as to whether Lerner will devote his full time and efforts to the proposed FM station in light of his prior broadcasting history. Movant's requested issue must be denied for failure to meet the specificity and support requirements of § 1.229(c) of the Commission's Rules. As properly pointed out by the Broadcast Bureau, movant includes no specific information to demonstrate that Lerner did not keep his "commitment" to the Lowell stations or that Lerner did not intend to move to Lowell when the application for transfer of control was filed. Cf. Atlas Broadcasting Co., 53 FCC 2d 468, 33 RR 2d 1565 (1975).[9] Furthermore, as also noted by the Bureau, Greater Media's present application represents that Lerner was station manager of the Lowel stations from 1963 to 1967 and in the absence of contrary evidence Lerner must be presumed to have at least initially met his "commitment." Finally, in light of the above, we are given no reason to believe that Lerner will not fulfill his obligations to the proposed station.

9. *Misrepresentation—Station Location.* Movant next contends that WLLH, Inc., engaged in misleading and deceptive practices to make it appear that Station WSSH(FM), Lowell, Massachusetts, was located in Boston. Specifically, movant alleges that a current rate card on file for Station WSSH(FM) prominently states "Boston's Wish for Beautiful Music"; that a 1973 rate card in the licensee's public file boasts of "Beautiful Sounds Over the Merrimack Valley and Greater Boston"; and that Station

[5] Paragraph 19, Section II, FCC Form 301 asks for information as to whether the applicant or any party to the application has any other application pending before the Commission.

[6] Greater Media filed its application with the Commission on May 20, 1974.

[7] With regard to the allegations concerning the January 10, 1975 amendment to the Greater Media application, a request for a § 1.65 issue would have been more appropriate since the filing of the renewal applications occurred subsequent to the filing of Greater Media's application.

[8] Greater Media's alleged motive is nonexistent since the Commission's inquiry regarding WLLH, Inc.'s commercial policies arose subsequent to the filing of the instant application, the WLLH and WSSH(FM) renewal applications, and the January 10, 1975 amendment to the instant application.

[9] Movant's new allegations in its reply pleading will be disregarded. See §§ 1.45 and 1.294 of the Commission's Rules. Movant will not be permitted to attempt to cure an otherwise defective motion where information contained in its reply pleading was readily available and could have been included in the original motion to enlarge issues. Industrial Business Corporation, 40 FCC 2d 69, 26 RR 2d 1447 (1973).

WSSH(FM) is listed in the 1974 edition of Standard Rate and Data Service (SRDS) under the section for Boston stations. Attached to the motion is a copy of the SRDS listing. Movant maintains that this apparent lack of candor raises serious questions as to the probability that Greater Media will engage in similar conduct should its application be granted. The Bureau opposes addition of the issue.

10. Movant's requested issue will be denied. Aside from the fact that certain of movant's allegations (i.e., concerning the probability that Greater Media will engage in deceptive practices) are speculative and thus fail to comport with the support requirements of § 1.229(c), the Board's examination of the questioned SRDS listing and rate card in the Commission's files does not reveal that the licensee attempted to mislead advertisers and members of the general public as to the location of WSSH(FM). As noted by the Bureau, WSSH(FM)'s contour map reflects that the facility provides a primary 1 mV/m service to most, if not all, of Boston. Furthermore, the SRDS listing includes a Lowell mailing address, an explicit reference to Lowell in the space allocated for the city of license, and a notation stating, "This is a paid duplicate of the listing appearing under Lowell, Mass." With regard to the rate card, a Lowell mailing address is prominently displayed directly below the legend in question. Under these circumstances, the Board finds no basis for addition of the requested issue.

11. *Community Ascertainment Issue.* Movant requests the addition of a community ascertainment issue based on a representation in Greater Media's application that its general public survey was conducted by a "paid employee under the personal supervision of Daniel M. Lerner."[10] Movant argues there is no indication that the unidentified employee will hold any position in the proposed operation, is still employed by Lerner, or was a prospective employee of the proposed station at any time. An appropriate issue will be added. The Commission's Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650, 21 RR 2d 1507 (1971), Q. and A. 11(b), mandates that an applicant's general public survey be conducted by principals, employees, or in the case of newly formed applicants, prospective employees. In the absence of information identifying the interviewer in greater detail, it is impossible to determine whether the applicant has fully complied with the *Primer's* requirements, and, accordingly, we are constrained to add a limited community ascertainment issue. *Cf.* Philadelphia Broadcasting Co., 51 FCC 2d 361, 32 RR 2d 1300 (1975); KOWL, Inc., 49 FCC 2d 962, 31 RR 2d 1589 (1974).

12. *Misrepresentation Issue.* Movant seeks the addition of a misrepresentation issue against Greater Media, contending that WLLH, Inc.'s public affairs programming promises exceeded performance or, at best, were subject to continuing erosion. Specifically, movant claims that WLLH, Inc. proposed no public affairs programming in its WSSH(FM) renewal application even though the lack of such programming was obviously inconsistent with the multiple problems and needs ostensibly disclosed by a recent ascertainment survey in Lowell.[11] Asserting that WLLH, Inc. had proposed two percent public affairs programming when it purchased WSSH(FM) in 1963, movant alleges that Greater Media's representation in the instant application that it will broadcast four percent public affairs programming may be similarly eroded or altogether eliminated should Greater Media's application be granted. The Review Board will deny the requested issue. Movant's allegations regarding Greater Media's future programming intentions are entirely conjectural and thus fail to comply with § 1.229(c) of the Commission's rules. With regard to alleged deficiencies in the WSSH(FM) renewal application, the Board concurs with the Broadcast Bureau that movant has not shown that all relevant facts were not before the Commission at the time the Commission granted the WSSH (FM) renewal application. Based on the foregoing, the Board is of the view that movant has not advanced any basis for addition of the issue.

13. *Equal Employment Program Issue.* Movant requests an equal employment program issue premised on an alleged deficiency in WLLH, Inc.'s Annual Employment Report (FCC Form 395). Pointing out that the instructions for Form 395 prescribe that the employment data filed therein reflect employment figures from any one payroll period in January, February, or March, and that the same payroll period should be used in each year's report, movant alleges that despite these clear requirements, WLLH, Inc. specified the April, March, and May payroll periods in its respective 1973, 1974, and 1975 reports. Movant argues that the issue should include an inquiry into WLLH, Inc.'s motivation for reporting data in this manner. The requested issue will be denied. Although WLLH, Inc. apparently did not prepare its Annual Employment Reports in strict compliance with the form's instructions, the Board is of the view that an inquiry into the matter is not warranted. As noted by the Bureau, movant has made no showing that WLLH, Inc.'s selection of different payroll periods resulted in nonconformance with the general objectives of the Commission's equal employment program or that the selected payroll periods resulted in any distortion or deficiency in the licensee's Annual Employment reports.

14. *Ineptness Issue.* Movant's final request for an issue is based on the accumulation of the allegations already discussed in paragraphs 2 through 13 herein. It is well established that the Board will add such an issue "only where an applicant's conduct has concerned relevant matters of major significance, and where the conduct has disclosed a pattern of carelessness and inadvertence." See Folkways Broadcasting Company, Inc., 26 FCC 2d 175, 20 RR 2d 528 (1970). Here, the Board is of the view that the importance and number of the alleged deficiencies already noted are not sufficient to warrant an issue, see Perdido Broadcasting Company, FCC 75R-428, released November 18, 1975, particularly since only one of movant's requested issues will be added by the Board.

15. *Accordingly, it is ordered,* That the request for late acceptance, filed September 16, 1975, by Alexander S. Klein, Jr., is granted; and

16. *It is further ordered,* That the motion to enlarge issues, filed September 16, 1975, by Alexander S. Klein, Jr., *is granted* to the extent indicated below, and *is denied* in all other respects; and the issues in this proceeding *are enlarged* to include the following issue:

To determine who conducted the interviews of the general public relied on by Greater Media Radio Company, and, in light of the evidence adduced, whether the applicant has complied with the requirements set forth in the Commission's Primer; and

17. *It is further ordered,* That the burdens of proceeding with the introduction of evidence and proof under the issue added herein shall be on Greater Media Radio Company.

Adopted: January 8, 1976.

Released January 16, 1976.

FEDERAL COMMUNICATIONS COMMISSION,[12]
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.76-2339 Filed 1-26-76;8:45 am]

[Docket No. 19919; FCC 76-30]

AMERICAN TELEPHONE AND TELEGRAPH CO.

Decision and Memorandum Opinion and Order on Investigation

In the matter of American Telephone and Telegraph Co. (Docket No. 19919) charges, regulations, classifications and practices for voice grade/private line service (high density—low density) filed with transmittal No. 11891.

1. We have before us three petitions asking us to reconsider all or part of our Interim Decision and Memorandum Opinion and Order (Interim Decision) in the above-captioned proceeding, 55 FCC 2d 224, released September 18, 1975 (40 FR 45464). In that Interim Decision we found the record insufficient for us to render a decision on the lawfulness of the tariff and accordingly remanded the investigation for further hearings, under strict guidelines as set forth therein. We also decided, inter alia, that an unlawful discrimination existed between the rates charged for TELPAK end links as

[10] As noted earlier (paragraph 2, supra), Lerner is a principal of Greater Media.

[11] WSSH(FM)'s renewal application was granted on May 8, 1975.

[12] Board member Kessler not participating; Dissenting Statement of Board Member Ohlbaum filed as part of original document.

used by certain multi-point subscribers (pursuant to American Telephone and Telegraph Company's tariff FCC No. 260, Series 5000) and the rates charged for Series 2000/3000 voice grade services (the Hi-Lo tariff).[1]

2. AT&T, the Secretary of Defense (DOD) and the Airline Parties (Air Transport Association of America and Aeronautical Radio, Inc.) have filed for reconsideration, while the Trial Staff of our Common Carrier Bureau (Trial Staff), MCI Telecommunications Corporation and affiliated companies (MCI), Southern Pacific Communications Company (SPCC), the press parties (American Newspaper Publishers Association, The Associated Press, Commodity News Services, Inc., United Press International Inc. and Reuters Limited) and DOD variously filed responses and oppositions. AT&T and the airline parties submitted replies to the oppositions.

TELPAK END LINKS

3. DOD and AT&T take the position that our ruling regarding TELPAK end links was premature: that we should not have ruled on this issue unless we determined the lawfulness of the Hi-Lo rates. DOD alleges that it was improper for us to eliminate the only alternative the customer has to paying such "unlawfully high" rates. In fact, we never ruled on the lawfulness of the Hi-Lo rate structure. Rather, we redesignated the case for further hearings without ruling on the merits of the Hi-Lo structure. We found, however, that the TELPAK end link discrimination issue was clearly separable and unrelated to the issue of lawfulness of the Hi-Lo tariff. Thus, whatever rate structure is used for Series 2000/3000 services, the rates for multi-point voice grade TELPAK end links must not be set at different levels.[2]

4. AT&T now argues that TELPAK is not a like service to Series 2000/3000 voice grade private line services, and that the end links are simply part of the basic TELPAK service. It points to the fact that end links cannot be obtained unless the customer also secures a base TELPAK service, while 2000/3000 are end-to-services; that 2000/3000 is always routed through pricing points while end links need not be so routed and that 2000/3000 services terminate at the point of connection while end links may extend beyond such points. These differences do not necessarily render the services unlike if they do not differ in any material functional respect from each other. "See American Trucking Association, Inc. v. FCC," 377 F. 2d 121, 130 (D.C. Cir., 1966), cert. denied 386 U.S. 943 (1967).

5. We are not herein deciding whether or not the basic TELPAK service is a lawful service offering—that is an issue in our pending Docket No. 18128. It appears clear to us, however, that the press wire-services and others, who have used the TELPAK end links in constructing nationwide voice-grade private line networks, turned to this service only to avoid the higher charges which they would incur under the Hi-Lo tariff (see, e.g., proposed findings of United Press International, Inc. pp. 12–13). Throughout this proceeding, the press parties have asked us to preserve the end link "exception," as they termed it, in order to avoid the alleged irreparable damage which the rate increase associated with switching to the Hi-Lo tariff would have on the dissemination of news. They have discussed at length the major reconfiguration which would result if the "exception" were eliminated and the alleged cancellations which they expected from small newspapers and radio stations. All the evidence put forward, however, indicates that the only differences between the services, as they would use them, are in routing and configuring the system and in the charges they could incur and that functionally they are replacement services for each other. As a result, we reaffirm our finding that they differ in no material functional respect and that they are like communications services priced at unlawfully discriminatory rates within the meaning of section 202(a) of the Communications Act, 47 U.S.C. 202(a).[3] Accordingly, we herein deny reconsideration of our ruling in regard to TELPAK end links.

PREJUDGMENT OF DOCKET NO. 18128

6. In our Interim Decision we indicated that AT&T should file certain historical cost studies using fully distributed costs (FDC), method 1 of the seven methods put forth in Docket No. 18128. We also indicated that we have concerns regarding the mix of facilities actually being used for Series 2000/3000 services, the actual fill of activated facilities and whether the cross-elastic effects of Hi-Lo were properly excluded from AT&T's FTC study. The airline parties assert that these and other statements in the Interim Decision prejudged issues in Docket No. 18128, the Private Line Case.

7. As we stated clearly in our Interim Decision, we were not therein prejudging any issue in Docket 18128. The specific information requested in the reopened hearing was solely for the purpose of this proceeding, in order to compare the actual operating results and other updated filings with the existing record in the case. While we specified method 1 for FDC studies, we did not preclude AT&T from submitting any other studies which it felt were appropriate, and we agree with the airline parties that it would assist us if additional methods were used. In regard to our requests for actual fill by facility and for the mix of plant used for this service, we agree that the capacity cost and long run incremental cost (LRIC) concepts, if approved in 18128, do not require all these figures. However, in order for us to render a decision in this case no matter what the ultimate decision in the Private Line Case, it is appropriate to have sufficient data to permit a final decision regardless of which ratemaking methodology is approved therein.

8. The airline parties further contend that we should have a trial staff separated from the decision staff in Docket 18128 and that the existing non-separated staff dealing with Docket 18128 should be separated from the trial and decision staffs in the present case. At this juncture, with the record in 18128 long closed and a Recommended Decision issued, the question of a separated trial staff therein is moot. Further, since the present case does not in any way prejudge 18128, and since the record in 18128 does not address itself to the lawfulness of the tariff filing at issue herein, we see no merit in the multiple separation and staff fragmentation requested.

DEFICIENCIES IN THE RECORD

9. AT&T asserts that the record of this case supports its tariff. It claims that HiD, LoD and short haul are not like communications services priced at discriminatory rates but rather are elements of the same Series 2000/3000 service. It also contends that the rate differential is justified by the differences in the costs of providing these elements and, even if some of the deficiencies which we found in our Interim Decision do in fact exist, the rates for each element are still significantly above cost. Bell also contests our criticism of their market study, alleges that the errors which we found to exist therein indicate only delays in implementation of the specialized common carriers' (SCCs') construction program and disputes the relevance of certain of the figures in our decision. While in the hearing AT&T asserted that the Hi-Lo tariff was more closely related to costs than the tariff it replaced, an assumption for which we found no proof on the record, Bell now alleges that this fact is obvious from the rate structure and that it is only the new rates, not the pre-existing tariff, which was in dispute.[4] In

[1] We ordered AT&T to cure the unlawful discrimination by tariff filing. Such a filing was made on October 20, 1975, Transmittal No. 12443, to become effective on November 19, 1975. We denied petitions for interim relief from this order on October 30, 1975, FCC 75–1229, and subsequently denied petitions to suspend and reject the tariff on November 17, 1975, FCC 75–1271. The lawfulness of this order is now under consideration before the U.S. Court of Appeals for the D.C. Circuit, Case No. 75–2057. That Court on November 18, 1975 stayed our Order insofar as it required AT&T to file a tariff to cure the discrimination, and AT&T has deferred its tariff filing.

[2] We note that AT&T, at its discretion, chose to eliminate the discrimination by limiting end links to serving a single distant service point in a single exchange rather than by filing equivalent rates. Since we found that the tariff was not shown to be otherwise unlawful, we denied petitions to suspend and reject the filing, FCC 75–1271.

[3] We have instituted a separate proceeding, Docket No. 20667, to determine if the press is entitled to preferential rates for private line services. Memorandum Opinion and Order released November 6, 1975, FCC 75–1228.

[4] Since AT&T contended that Hi-Lo was more closely related to costs than the prior tariff it had the burden of proving this claim. We find nothing in the record to indicate whether or not the prior step rate was closer to costs than the Hi-Lo tariff.

addition, AT&T points to specific statements in the record which it asserts we overlooked in our analysis of the deficiencies of Bell's case. All these factors lead Bell to conclude that its proof in the record is sufficient for us to approve the Hi-Lo tariff.

10. While AT&T asserts that we should have found the Hi-Lo tariff justified by the record, both DOD and MCI contend that the findings in our Interim Decision lead to the inescapable conclusion that AT&T failed to meet its statutory burden of proof to justify its tariff filing. Accordingly, DOD concludes that the tariff is "statutorily unlawful;" and MCI asserts that our failure to reject the tariff "is a most arbitrary and capricious action which deprives * * * the * * * parties of due process of law." (Opposition, pp. 18–19). MCI points to several instances where Bell either refused to supply information which was requested by the parties or was allegedly unresponsive in its answers to interrogatories.

11. Although these petitions set forth no substantive facts or arguments which were not raised at the hearing and therefore do not necessarily comply with the requirements of petitions for reconsideration, they do raise significant issues concerning the burden of proof, and this has caused us to reexamine on our own motion the Interim Decision and the record of this case.

12. After examining the reconsideration petitions and responsive pleadings, and upon review of the record of this proceeding, we have decided to reconsider our Interim Decision insofar as it remands this case for further hearings. In any hearings before the Commission involving increased charges, section 204 of the Communications Act, 47 U.S.C. 204, requires that the burden of proof "to show that the increased charge * * * is just and reasonable shall be upon the carrier." Since the rates for LoD and short haul customers are generally increased in this filing, Section 204 places the burden on AT&T to demonstrate that the tariff is just and reasonable.

13. Additionally, both this Commission and the Courts have held that the burden is on the filing carrier to demonstrate that a section 202(a) discrimination is just and reasonable. "American Trucking Associations, Inc., supra at 133; ITT Worldcom (48 kHz)," 29 FCC 2d 493 (1971). "See also Amendment of Part 61 of the Commission's rules," 40 FCC 2d 149, 151–2 (1973), wherein we cited the Administrative Procedure Act, 5 U.S.C. 556, to support the proposition that the burden of proof is generally on the filing carrier to justify any new tariff filing, not only in the case of an increased charge. Accordingly, we find that AT&T has the burden of proof of justifying that its Hi-Lo tariff filing is just and reasonable pursuant to sections 201(b) and 204, and that it is not unlawfully discriminatory pursuant to section 202(a) of the Act.

14. As stated in our decision on "Specialized Common Carriers", 29 FCC 2d 870, 915 (1971), "aff'd sub nom. Washington Utilities and Transportation Commission v. FCC," 513 F. 2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975), we are firmly of the view that, where the services of established carriers and specialized common carriers "may be in direct competition, departure from uniform nationwide pricing practices may be in order, and in such circumstances will not be opposed by the Commission." In our Interim Decision on Bell's Hi-Lo rates, we reaffirmed this policy and further stated our view that the Hi-Lo concept is, as a general principle, a valid type of competitive response by Bell. We continue to hold that view.

15. It is not the fact that Bell has departed from nationwide rate averaging, then, which we found not to be justified in our Interim Decision. Rather, we found the record insufficient to support AT&T's claim that the specific rates and conditions in the Hi-Lo tariff were a reasonable application of this principle—i.e., that the criteria used in designating HiD and LoD locations and routes properly reflected actual network operations; that the cost information supplied was sufficiently related to current, actual facility use and cost; and that, in general, the specific rates were adequately justified on the basis of cost and/or other criteria.

16. Our Interim Decision enumerated many of the gaps and deficiencies which exist in the record of this case. Among the most significant deficiencies and omissions were the failure of AT&T to justify separately the HiD, LoD and short haul services (55 FCC 2d 245) and thereby to justify the discrimination among such services; to provide an accurate market analysis (55 FCC 2d 232–3); and to justify its estimates of fill factors, cross-elasticity parameters, route-to-air ratios, facility mixes, rerouting estimates and other factors (55 FCC 2d 233, 237). Additionally, we found that AT&T had not adequately documented or justified its computer model, PLIAC, through which its cost projections were developed (55 FCC 2d 237–8).

17. As a result of these deficiencies, we found in the Interim Decision that AT&T had not satisfied its burden of proof in justifying its tariff. However, in view of the fact that this was the first major competitive response to specialized carrier competition, we felt we should exercise our discretion and remand the case for further hearings while the tariff remained in effect. Upon further reflection and reconsideration we believe it inappropriate and not in the public interest to permit the subject tariff to remain in effect while conducting further hearings into its lawfulness. It appears that much of the operating, cost, and other information which we consider essential for justification of the present Hi-Lo rates, and as specified in our Interim Decision, is not readily available either within Bell's books of account or the workpapers prepared to support its initial filing. Thus a rehearing of the present case would necessarily involve the development and review of extensive new studies and data, rather than the mere augmentation of existing data. This would, inturn, entail a lengthy proceeding during which the present, unjustified Hi-Lo tariffs would remain in effect.

18. We now believe a more orderly disposition of this matter, which best serves the public interest, is to rule the present tariff unlawful and afford Bell the opportunity to develop a new tariff and supporting information consistent with guidelines established in our Interim Decision (55 FCC 2d 246–8). We believe this result is contemplated by Section 201(b) of the Act, 47 USC 201(b), which declares that charges, practices, classifications and regulations which have not been shown to be just and reasonable are unlawful and that common carriers subject to the Act must file such charges and practices which are just and reasonable. Accordingly, AT&T is directed to file a new tariff to replace the Hi-Lo offering, as provided below. The analysis which led to our conclusion in the Interim Decision that the tariff had not been justified by the present record is hereby incorporated by reference, and we shall in this Decision respond only to certain of the principal allegations made in the reconsideration petitions and responsive pleadings.

19. As enumerated in part above, we found in the Interim Decision that the record, despite its volume, contains numerous areas where key assumptions are not justified or where the only justification for statements which AT&T submits is "marketing judgment" or estimates of AT&T personnel, the bases of which are not explained. While Bell asserts on reconsideration that some of these areas are justified in specified exhibits or interrogatory responses running to dozens or even hundreds of pages, we find in those pages key criteria or assumptions which remain unsupported. Thus, in reexamining these exhibits we find nothing which would change our conclusion of the insufficiency of these areas of proof. *See* Interim Decision, paragraphs 21–53.

20. Bell repeats, however, the basic theory under which it presented its evidence, i.e., that HiD, LoD and short haul are all elements of the same service and that the only important question is whether the entire service is priced such that the revenues therefrom cover costs and provide contribution to other Bell services. We found, however, that there are three separate services involved and that we could not find in the record that each is cost-justified. This is discussed in more detail below. Given this conclusion that a discrimination exists, we have again reviewed the entire record of this case. We are still unable to find sufficient evidence to justify Bell's conclusions as to its costs of providing each one of these services. Accordingly, AT&T has not satisfied its burden of demonstrating that the discrimination inherent in this pricing scheme is just and reasonable or that some of the rates are not being cross-subsidized by users of other AT&T services. Since a significant number of the cities served by the competing SCCs are HiD rate centers, AT&T has also not demonstrated that the pricing of HiD routes is not anti-competitive.

21. Since AT&T reiterates its contention that HiD, LoD and short haul are merely rate elements and are not within the purview of Section 202, we believe it appropriate to examine Bell's arguments. The view put forth in AT&T's petition for reconsideration is that they are not separate services since (1) both HiD and LoD links may be utilized in the same communications path, and (2) one of these "elements" could not be curtailed without curtailing to some extent the other two as well. These arguments are not persuasive. A customer ordering service to a LoD service point from either a HiD or a LoD service point has the option of securing a single LoD link or a combination of LoD and HiD links. The mere fact that a customer can interconnect the HiD and LoD links to form a single end-to-end service does not make HiD and LoD elements of the same service. Many other communications services, frequently involving more than one carrier, are interconnected to form a single communications path and they do not thereby become the "same" service. Regarding AT&T's second argument, if HiD, for example, were curtailed, AT&T claims that LoD would have to be somewhat curtailed as well. This is only true because many multi-point customers have a requirement for service between both HiD and LoD points. A customer at a low density rate center who has elected to use a combination of LoD and HiD circuits to reach another LoD center or a HiD center still has the option of securing a LoD link for the entire service. Accordingly, AT&T's argument that one service cannot be curtailed without curtailing the others in part is misleading, and it does not convince us that the three parts of Series 2000/3000 services are merely elements of the same service. What is more important is that a customer's choice of HiD, LoD, short haul, or a combination of the first two is dictated by the parameters AT&T has established for the particular service (e.g., whether or not his service points are more than twenty-five miles apart or whether or not each service point meets the four criteria necessary to be considered a high density rate center). Since a customer is restricted in his choice by his particular service requirements, it follows that HiD, LoD and short haul are distinct services, not elements used in developing a single service.

22. Even assuming *arguendo* that HiD, LoD and short haul were *not* separate but like services, however, they could still be found unlawful pursuant to Section 202(a) of the Act if they give any "unreasonable preference to any particular person, class of persons, or locality." The Hi-Lo rate structure clearly gives a preference to the class of persons who secure voice grade private line service between two high density rate centers more than twenty-five miles apart, and to subscribers in high density localities. Those persons and localities have had their rates for such service decreased, while all other users of Series 2000/3000 service have suffered increases over the prior rates. Unless this preference is justified by costs or by some other reason, it must be found unlawful under the Act. Accordingly, we reach the same conclusion under AT&T's theory, that is, we must determine whether or not AT&T has justified its rate differential by costs or some other means.

23. Where a discrimination or preference exists, AT&T agrees that it can be found justified by cost differences, as we stated in our Interim Decision. Bell also asserts that we therein improperly quoted from the TELPAK Sharing decision, 23 FCC 2d 606 (1970) since that case dealt with a situation where there were no alleged cost differences to justify a discrimination. We were aware of this fact and cited the case in our analysis concerning whether, since we had concluded that AT&T's cost support was not sufficient to justify the rates, they could be justified under competitive necessity or some other policy.[5] AT&T then goes on to dispute our finding that it had not provided sufficient information to justify its allegation that no cross-subsidization exists among the services. Since Bell claims that the burden analysis is the appropriate test for determining whether cross-subsidization exists, one would assume that a separate burden analysis would have been submitted for each of the services. This is not the case, however, as AT&T refused, upon request of the SCCs, to prepare such an analysis. We are thus presented with the circular argument that the burden analysis is the appropiate means to measure cross-subsidization but that such an analysis would be "inappropiate and meaningless" where cross-subsidization between HiD and LoD is in dispute.

24. We have indicated that a principal concern in this record is whether the costs of HiD, LoD and short haul services were each fully documented, not simply whether the aggregate Series 2000/3000 services are cost-justified. Yet most of the cost material of record is designed to justify the reasonableness of the aggregate tariff. We are never told, for example, the actual facilities which are in use, or which are projected to be constructed, between high density or low density rate centers.[6] We noted in our Interim Decision that many of the inputs into AT&T's computer model (PLIAC) are not fully documented (e.g., facility fill, capacity costs of facilities, market response criteria, rerouting requirements, etc.), and that the documentation of PLIAC itself is insufficient to indicate the manner of performing calculations within the model and the source of various ratios and data items. The ultimate figure derived from the PLIAC Model is the LRIC to AT&T of aggregate Series 2000/3000 services. Bell then utilizes PLIAC again, with even less documentation of the methodology employed, to make the secondary derivations of LRIC by service (HiD, LoD and short haul) and by rate element (interexchange channel, channel terminal and station terminal). As indicated above, no burden test was performed on the separate services. Thus, the most glaring deficiency in the LRIC analysis is the failure to derive and justify costs by service.

25. Bell's historical cost FDC study is even more deficient in this regard. While revenues are recomputed to take into account the new rate structure (without considering the cross-elasticities associated with such repricing), the study does not indicate the amount of investment allocable to the three services, the facilities mix pertaining to each, or whether or not there is indeed any correlation between the routes assigned to HiD, LoD and short haul services and the average investments associated with each. Neither the record citations which AT&T has submitted in its petition, nor our further examination of the entire record, lead us to change our opinion that the record of this case is insufficient to prove the lawfulness of the Hi-Lo tariff.

26. From our analysis of the record evidence, we have found that AT&T has not satisfied its burden of justifying the Hi-Lo tariff. This failure to submit sufficient and appropriate evidence to justify its rates, especially since much of the evidence was requested in interrogatories but was not produced, is fatal to its case.

27. Besides being insufficient to support the Hi-Lo rates, the record of this case is insufficient to permit us to justify any rate prescription, even for an interim period. Thus, if our decision were effective after the minimum thirty day period required pursuant to Section 408 of the Act, 47 U.S.C. 408, the result would be a hiatus in voice grade private line service for all AT&T customers, since the thirty day period is insufficient to permit AT&T to file a revised tariff containing the necessary justification. This interruption of service would not be in the public interest. Accordingly, we shall require AT&T to file a new tariff to become effective on the effective date of this

[5] The airline parties assert that; since the competitive necessity argument had not been raised by the parties as a possible justification for the Hi-Lo tariff, it was inappropriate for us to raise it in the Interim Decision. While it may be literally true that competitive necessity was not raised explicitly as a possible justification for the Hi-Lo tariff, both Bell and the other parties to the proceeding have clearly recognized that this tariff was filed in response to the presence of competition for private line services. In any event, since we have held in the past that competitive necessity can justify a discriminatory rate, we felt obligated to consider every possible means of determining whether or not the tariff was justified.

[6] We are supplied with projections of new high and low capacity high frequency line facilities which will be activated in connection with all Bell services and with estimates, not supported, of the percentages of high and low capacity facilities which will be used in connection with each Series 2000/3000 service. We are not given the actual facility mix between city pairs or the facilities which are used, or are projected to be used, for private line services, despite the requests of the parties for much of this information.

Decision. Pursuant to our statutory authority under sections 408, 4(i) and 4(j) of the Communications Act, 47 U.S.C. 408, 4(i), 4(j) we shall set the effective date of this Decision ninety days after publication in the Federal Register, in order to permit AT&T to prepare and file a new tariff to replace the unlawful Hi-Lo schedules without discontinuance of service to the public. Such new tariff shall be filed on not less than seven days notice.

28. While we believe the 90 day period is sufficient for AT&T to file its revised tariff for Series 2000/3000 services, we realize that it will need to expand considerable effort to put its supporting material filed pursuant to § 61.38 of our rules and meeting the guidelines established in paragraphs 74–75 of our Interim Decision, into proper form. Previous filings of AT&T have included support data running to well over 1000 pages (e.g., the initial Hi-Lo filing, the DDS supporting data, the material supporting AT&T's January, 1975 rate increase filing, and the WATS rate submission). Additionally, the guidelines in our Interim Decision require a more detailed submission than was made in previous filings. Accordingly, AT&T must accompany its revised filing with its cost justification and as many of the supporting work papers and other material as can be put in proper form at that time. If it is then unable to submit all the required material, however, we are affording AT&T an additional 60 days to supplement its filing.

29. We believe this action to be the most appropriate under the circumstances of this case. While the Hi-Lo tariff is herein found unlawful, there is a clear public interest requirement for continuity of service to the public. Since we retain our rights to investigate or reject the tariff or to impose an accounting order in the event any rates are increased, we believe the course outlined above will best serve the public interest in this instance.

30. Our Memorandum Opinion and Order which designated this case for hearing, 44 FCC 2d 697 (1974), imposed an accounting order on AT&T for all charges which were increased in the Hi-Lo filing. In the normal case where rates are found unlawful after hearing, we would prescribe lawful rates, and therefore would know what portions of the increases are unlawful. Here, however, the record is insufficient to support a rate prescription, and we therefore believe it an appropriate exercise of our discretion not to order any refunds. Further, the Hi-Lo schedules increased some rates and decreased others, and many subscribers to both HiD LoD services found their total charges virtually unchanged. The existence of the TELPAK end link exception also ameliorated some of the rate increases which would have been incurred by customers of LoD services. Under section 204 of the Act, 47 U.S.C. 204, we have the right only to order refunds of unjustified increased charges—we cannot require retroactive billing. Under these circumtsances, many customers who subscribe to both HiD and LoD services would receive windfalls as a result of any refund order for which we can find no justification.

31. Accordingly, although we have the right to order such funds even though it will reduce AT&T's total revenue, "Federal Power Commission v. Tennessee Gas Co.", 371 U.S. 145 (1962), in view of the above facts it appears to us inappropriate to do so. We have therefore decided to terminate the accounting order without granting refunds.

32. Accordingly, *It is ordered*, That pursuant to sections 201(b) and 202(a) of the Communications Act of 1934, as amended, 47 U.S.C. 201(b), 202(a) the tariff schedules filed with AT&T Transmittal No. 11891, and revisions thereto, found unlawful herein, are null and void.

33. *It is further ordered*, That AT&T shall file a new tariff to replace the schedule found unlawful herein, and such new schedule shall be filed to become effective upon the effective date of this Decision,[7] accompanied by the information required pursuant to § 61.38 of the Commission's Rules and Regulations, 47 CFR 61.38, and which meets the guidelines specified in the Interim Decision and Memorandum Opinion and Order, 55 FCC 2d 224 (1975) at paragraphs 74–75.[8]

34. *It is further ordered*, pursuant to Section 408 of the Communications Act of 1934, *as amended*, 47 U.S.C. 408, this Decision shall become effective on or before April 27, 1976.

35. *It is further ordered*, That the provisions of § 61.58 of the Commission's rules and regulations, 47 CFR 61.58, are waived, and the tariff schedules required to be filed pursuant to paragraph 33 above shall be effective upon not less than 7 days notice.

36. *It is further ordered*, That paragraphs 78 and 80 of 55 FCC 2d are modified consistent with this Decision.

37. *It is further ordered*, That the accounting ordered pursuant to 44 FCC 2d 697, 701 is terminated.

38. *It is further ordered*, That Docket 19919 is terminated.

39. *It is further ordered*, That the petitions for reconsideration herein are granted to the extent indicated herein and otherwise are denied.

FEDERAL COMMUNICATIONS COMMISSION,[9]
[SEAL] VINCENT J. MULLINS,
Secretary.

Adopted: January 16, 1976.

Released: January 22, 1976.

[FR Doc.76-2337 Filed 1-26-76;8:45 am]

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[7] AT&T, by filing a new tariff, must accept the conditions that we may order an accounting without suspending the tariff.

[8] This material may be supplemented within sixty days of this filing.

[9] Concurring statement of Commissioner Washburn filed as part of the original document.

[Report No. 789]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

JANUARY 19, 1976.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's rules and regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (see section 309(c) of the Communications Act of 1934) or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning any of these applications within 30 days of the date of this notice.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of busines one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See §§ 1.227(b)(3) and 21.30(b) of the Commission's rules.)

FEDERAL COMMUNICATIONS COMMISSION.
[SEAL] VINCENT J. MULLINS,
Secretary.

APPLACATIONS ACCEPTED FOR FILING
DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

21169-CD-P-(3)-76 Delta Valley Radiotelephone Co., Inc. (KMA743) (Developmental), C.P. for additional base facilities to operate on 152.135 MHz, and repeater facilities to operate on 72.96 MHz at Loc. #3: Atop North peak of Mt. Diablo, appx. 7.5 miles NE of Danville, California; and additional control facilities to operate on 72.10 MHz at Loc. #1: 3502 Kroy Way, Sacramento, California.

21170-CD-P-(2)-76 Pacific Northwest Bell Telephone Company (KOE256), C.P. to replace transmitter operating on 35.26 and 152.63 MHz located 1.8 miles NW of Bend, Oregon.

21171–CD–P–76 Seattle Radiotelephone Service (KOA733), C.P. to add standby facilities to operate on 152.21 MHz to be located at Seattle First National Bank Building, Seattle, Washington.

21173–CD–P–76 John W. Bennett d.b.a. Bennett Radio Paging Service (KOP326), C.P. for additional facilities to operate on 152.06 MHz to be located at a new site described as Loc. #2: G-3064 Miller Road, Flint, Michigan.

21174–CD–MP–76 Autofone, Inc. (KWT874), Modification of C.P. to change antenna system and relocate facilities operating on 158.70 MHz to be located at Corner of Claxton Dairy Road and Brookwood Drive, Dublin, Georgia.

21175–CD–P–76 Answer Iowa, Inc. (KSW210), C.P. for additional facilities to operate on 152.18 MHz to be located at a new site described as Loc. #2: Approx. 1.5 miles West of Clinton, Iowa.

21177–CD–P–76 Salisbury Answering Service (KGH868), C.P. to replace transmitter operating on 152.03 MHz located 300 feet West of East Street, near Arthur Jersey Road, 0.5 miles N. of Salisbury, Maryland.

21178–CD–P–76 Delcambre Telephone Company (KHQ968), C.P. for additional facilities to operate on 152.66 MHz located at West End of Main Street, Delcambre, Louisiana.

21179–CD–P–76 The Peoples Telephone Company of Rio, Inc. (New), C.P. for a new 1-way Signaling station to operate on 35.22 MHz to be located .7 miles North, Lost Lake, Wisconsin.

21180–CD–P–(2)–76 Mt. Vernon Telephone Company (KUC854), C.P. for additional facilities to operate on 158.10 MHz at (2) new sites described as Loc. #2: Hwy. 106, 1.5 miles E. of Fort Atkinson, Wisconsin; and Loc. #3: Sunny Hill, 5 miles ESE of Baraboo, Wisconsin.

21181–CD–AL–76 Terry Clymer d.b.a. Mayfield Answering Service. Consent to Assignment of License from Mayfield Answering Service, Assignor to Mayfield Answering Service, Inc., Assignee. Station: KRS685, Mayfield, Kentucky.

21182–CD–P–(2)–76 Rad-Com, Div. of Clinitel Corporation (New), C.P. for a new 1-way signaling station to operate on 152.24 & 158.70 MHz to be located at 4001 Nebraska Avenue, NW., Washington, D.C.

21183–CD–MP–76 LTS Communications, Inc. (KUS401), Modification of C.P. for additional facilities to operate on 454.050 MHz, control, at a site described as Loc. #2: Thompson Building, Dillon Shopping Center, Dillon, Colorado.

21184–CD–MP–(2)–76 LTS Communications, Inc. (KUS341), Modification of C.P. for additional facilities to operate on 459.125 MHz, repeater, at Loc. #1: Bald Mountain, Dillon, Colorado; and 454.125, control, at a new site described as Loc. #2: Thompson Building, Dillon Shopping Center, Dillon, Colorado.

21185–CD–P–76 J. M. Blodgett d.b.a. Radio Page (KWT885), C.P. for additional facilities to operate on 35.58 MHz to be located at a new site described as Loc. #2: Claridge Hotel, Park Ave., at the Boardwalk, Atlantic City, New Jersey.

21186–CD–P–(2)–76 Martin J. Nunn (New), C.P. for a new 1-way station to operate on 35.58 MHz at (2) sites described as Loc. #1: 219 West Thomas Street, Rome, New York; and Loc. #2: Star Hill, 3.45 miles WNW of Remsen, Rome, New York.

21187–CD–AP–76 Answering Service, Inc. Consent to Assignment of Permit from Answering Service, Inc., Assignor to Cleveland Mobile Telephone, Inc., Assignee. Station: KUS273, Cleveland, Ohio.

Major amendment

20778–CD–P–(6)–76 RCC of Virginia, Inc. (KIY780). Amend to change antenna system and increase power at Loc. #2, Little North Mountain, New Harrisonburg, (Rockingham) Virginia. All other particulars to remain as reported on PN#780 dated November 17, 1975.

Informative

It appears that the following applications may be mutually exclusive and subject to the Commission's Rules regarding Ex Parte presentations by reasons of potential electrical interference.

Maryland (152.18 MHz)

American Radio Telephone Service, Inc., Winfield, Maryland, 20718–CD–P–76.

Radio Communications, Inc., Frederick, Maryland, 20331–CD–P–76.

RURAL RADIO SERVICE:

60252–CR–ML–76 The Offshore Telephone Company (WAF836), Modification of License to change frequency from 454.375 MHz to 454.650 MHz, located at Block 266, Eugene Island Area, Gulf of Mexico.

POINT-TO-POINT MICROWAVE SERVICE

1492–CF–P–76, American Telephone and Telegraph Company (KKT21), 2 miles east of Lehigh, Texas. Lat. 32°36'13" N., Long. 94°06'04" W., C.P. to change polarity from Horizonal to Vertical on frequencies 3750, 3830, 3910, and 4150 MHz, and from Vertical to Horizontal on 3770, 3850, 3930, 4010, 4090, and 4170 MHz toward Marshall, Texas on azimuth 272°39'.

1493–CF–P–76, Same (KKT20), 4.5 miles North of Marshall, Texas. Lat. 32°36'51" N., Long. 94°23'29" W. C.P. to change polarity from Horizontal to Vertical on frequencies 3710, 3790, 3870, 3950, and 4110 MHz and from Vertical to Horizontal on 3730, 3810, 3890, 3970, 4050, and 4130 MHz toward Leigh, Texas on azimuth 92°30'; change polarity from Horizontal to Vertical on 3710, 3790, 3870, and 4110 MHz, and from Vertical to Horizontal on 3730, 3810, 3890, 3970, 4050, and 4130 MHz toward East Mountain, Texas on azimuth 269°40'.

1494–CF–P–76, Same (KKP99), 2 miles NW of East Mountain, Texas. Lat. 32°36'36" N., Long. 94°52'11" W. C.P. to change polarity from Horizontal to Vertical on frequencies 3750, 3830, 3910, 3990, and 4150 MHz, and from Vertical to Horizontal on 3770, 3850, 3930, 4010, 4090, and 4170 MHz toward Marshall, Texas on azimuth 89°24'.

1501–CF–P/ML–76, The Mountain States Telephone & Telegraph Company (WBP65) Guthrie Peak, 11.8 miles South of Clifton, Arizona. Lat. 32°53'11" N., Long. 109°18'46" W. C.P. and Mod. License to reinstate expired station license on frequencies 5960.0V and 10915V MHz toward Clifton, Arizona on azimuth 355.6°, and 6019.3V and 11115H MHz toward Safford, Arizona on azimuth 261.0°.

1502–CF–P/ML–76, Same (WDD47), Bear Spirng, 12 miles NW of Huachuca Village, Arizona. Lat. 31°46'08" N., Long. 110°27'58" W. C.P. and Mod. License to reinstate expired station on frequencies 6367.7V and 11565V MHz toward Siera Vista, Arizona on azimuth 147.2°, 6382.6H and 11365V MHz toward Vail, Arizona on azimuth 331.6°, and 2178.0H MHz toward Mt. Lemmon, Arizona on azimuth 337.9°.

1511–CF–P–76, Uintah Basin Telephone Association, Inc. (NEW), Flattop Butte, 2.6 Miles NW of Myton, Utah. Lat. 40°13'20" N., Long. 110°06'15" W. C.P. for a new station on frequencies 11345.0V and 11665.0V MHz toward Ioka, Utah on azimuth 339.2°; 2126.8H MHz toward a new station at Altamont, Utah on azimuth 313.5°; 2122.4H MHz toward a new station at Randlett, Utah on azimuth 88.2°.

1512–CF–P–76, Same (NEW), Tabiona, Utah. 40°21'14" N., Long. 110°42'23" W. C.P. for a new station on frequency 2112.4V MHz toward Tabby Mtn. Passive Reflector on azimuth 271.9°, and from Passive Reflector toward a new station at Altamont, Utah on azimuth 89.2°.

1513–CF–P–76, Same (NEW), Altamont, Utah. Lat. 40°21'34" N., Long. 110°17'35" W. C.P. for a new station on frequencies 2162.4V MHz toward Tabby Mtn. Passive Reflector on azimuth 269.6°, and from Passive Reflector toward a new station at Tabiona, Utah on azimuth 91.9°.

1514–CF–P–76, Uintah Basin Telephone Association, Inc. (NEW), 1 mile East of Neola, Utah. Lat. 40°25'59" N., Long. 110°-00'38" W. C.P. for a new station on frequencies 2162.4H MHz toward a new station at Flattop Butte, Utah on azimuth 199.0°, and 2172.0V MHz toward a new station at Lapoint, Utah on azimuth 99.9°.

1515–CF–P–76, Same (NEW), 1.1 miles WNW of Lapoint, Utah. Lat. 40°24'26" N., Long. 109°49'02" W. C.P. for a new station on frequency 2122.0V MHz toward a new station at Neola, Utah on azimuth 280.0°.

1516–CF–P–76, Same (NEW), 1.5 miles East of Randlett, Utah. Lat. 40°13'48" N., Long. 10946'26" W. C.P. for a new station on frequency 2172.0V MHz toward a new station at Flattop Butte, Utah on azimuth 268.4°.

1523–CF–P–76, South Central Bell Telephone Company (NEW), 1325 Noble Street, Anniston, Alabama. Lat. 33°39'42" N., Long. 85°49'46" W. C.P. for a new station on frequencies 11485V and 11325V MHz toward Coldwater, Alabama on azimuth 219.5°.

1524–CF–P–76, Same (KIB84), Coldwater, 1.5 miles SW of Anniston, Alabama. Lat. 33°-38'38" N., Long. 85°50'49" W. C.P. to add frequencies 10875V and 11035V MHz toward a new point of communication at Anniston, Alabama on azimuth 39.5°.

1525–CF–P–76, Wisconsin Telephone Company (NEW), Watertown C.O., 115 South 4th Street, Watertown, Wisconsin. Lat. 43°11'36" N., Long. 88°43'16" W. C.P. for a new station on frequencies 11625V and 11465V MHz toward a new station at Sullivan, Wisconsin on azimuth 152.5°.

1526–CF–76, Same (NEW), 0.5 mile NW of Sullivan, Wisconsin. Lat. 43°01'22" N., Long. 88°36'01" W. C.P. for a new station on frequencies 11015V and 170855V MHz toward a new station at Watertown, C.O., Wisconsin on azimuth 332.6°, and 10735V and 10895V MHz toward a new station at North Prairie, Wisconsin on azimuth 126.5°.

1527–CF–P–76, Same (NEW), 1 mile South of North Prairie, Wisconsin. Lat. 42°54'53" N. Long. 88°24'06" W. C.P. for a new station on frequencies 11425V and 11585V MHz toward a new station at Sullivan, Wisconsin on azimuth 30.6°, and 11425V and 11585V MHz toward Waukesha, Wisconsin on azimuth 58.9°.

1528–CF–P–76, Same (NEW), Waukesha, 5 miles SW of Waukesha Cth. X, Waukesha, Wisconsin. Lat. 42°57'34" N., Long. 88°-18'02" W. C.P. for a new station on frequencies 10735V and 10895V MHz toward a new station at North Prairie, Wisconsin on azimuth 238.9°.

1529–CF–P–76, Puerto Rico Telephone Company (WWZ49), Hato Tejas, Calle Morales, State Rd. #2, Km. 14, Hato Tejas, Puerto Rico. Lat. 18°24'33" N., Long. 66°10'52" W. C.P. to add frequencies 2128H MHz toward Torrecilla, Puerto Rico on azimuth 215.2°, and 4150H, 4070H, and 3910 MHz toward El Yunque, Puerto Rico on azimuth 105.0°.

1530–CF–P–76, Puerto Rico Telephone Company (WWZ29), Torrecilla, 2 miles NW of Barranquitas, Puerto Rico. Lat. 18°12'12" N., Long. 66°19'58" W. C.P. to add frequency 2178H MHz toward Hato Tejas, Puerto Rico on azimuth 35.1°.

1533–CF–P–76, Central Telephone Company (NEW), NE Corner of Main & Eclipse Streets, Searchlight, Nevada. Lat. 35°27'57" N., Long. 114°55'03" W. C.P. for a new station on frequency 2178V MHz toward Searchlight Passive Reflector on azimuth 108.6°, and from Passive Reflector to Nelson, Nevada on azimuth 358.3°.

1534–CF–P–76, Same (KYN50), 3 miles West of Nelson, Nevada. Lat. 35°42'06" N., Long. 114°53'24" W. C.P. to add frequency 2128V MHz toward Searchlight Passive Reflector on azimuth 178.3°, and from Passive Reflector to new station at Searchlight, Nevada on azimuth 288.6°.

1517–CF–P–76, American Telephone & Telegraph Company (KLT27), 3.3 miles West of Orla, Texas. Lat. 31°49'32" N., Long. 103°56'53" W. C.P. to add space diversity antennas.

1518–CF–P–76, Same (KLT26), Wink, 13.1 miles ENE of Mentone, Texas. Lat. 31°46'42" N., Long. 103°23'45" W. C.P. to construct a new tower and add space diversity antennas.

1519–CF–P–76, Same (KLT25), 2 miles West of Notrees, Texas. Lat. 31°54'40" N., Long. 102°47'00" W. C.P. to add space diversity antennas.

1547–CF–ML–76, Alaska Communications, Inc. (WSM75), No. 2 Lincoln Street, Sitka, Alaska. Lat. 57°02'56" N., Long. 135°20'18" W. Mod. of License to add frequencies 6189.8H and 6308.4H MHz toward Mud Bay, Alaska on azimuth 121.96° as a consolidation with station WBP78, Sitka.

1368–CF–P–76, Southern Pacific Communications Company (WAH608), 0.8 miles NW of Sheridan, Indiana. Lat. 40°08'29" N., Long. 86°14'29" W. C.P. to add 5974.8H toward Indianapolis, Indiana on azimuth 169.9 degrees.

1369–CF–P–76, Same (New), Indiana Square, Indianapolis, Indiana. Lat. 39°46'13" N., Long. 86°09'20" W. C.P. for a new station on 6226.9V toward Sheridan, Indiana on azimuth 349.9 degrees.

1450–CF–P–76, Eastern Microwave, Inc. (KFN21), New York City, New York. Lat. 40°46'09" N., Long. 73°58'55" W. C.P. to add 6271.4V MHz, via power split, toward East Meadow, New York, on azimuth 97.5 degrees.

1475–CF–P–76, South Bell Telephone & Telegraph Company. (KJH51), Spartanburg, South Carolina. Lat. 34°57'07" N., Long. 81°55'12" W. C.P. to add 10755V MHz toward Wellford, South Carolina, on azimuth 282.6 degrees.

1476–CF–P–76, Same (WQP73), Wellford, South Carolina. Lat. 34°58'39" N., Long. 82°03'33" W. C.P. to add 11285V MHz toward Greer, South Carolina, on azimuth 275.2 degrees.

1477–CF–P–76, Same (WQP72), Greer, South Carolina. Lat. 34°59'32" N., Long. 82°15'33" W., C.P. to add 10755V MHz toward Paris Mtn., South Carolina, on azimuth 247.9 degrees.

1478–CF–P–76, Same (KIY62), Paris Mtn., South Carolina. Lat. 34°56'29" N., Long. 82°24'40" W. C.P. to add 4050V MHz toward Clinton, South Carolina, on azimuth 137.0 degrees.

1479–CF–P–76, Same (KIY63), Greenville, South Carolina. Lat. 34°51'19" N., Long. 82°24'00" W. C.P. to add 3870V MHz toward Paris Mtn., South Carolina, on azimuth 353.9 degrees.

1480–CF–P–76, Same (KIY61), Clinton, South Carolina. Lat. 34°28'13" N., Long. 81°52'55" W. C.P. to add 4090V MHz toward Chapin, South Carolina, on azimuth 126.0 degrees.

1481–CF–P–76, Same (KIY60), Chapin, South Carolina. Lat. 34°11'11" N., Long. 81°24'49" W. C.P. to add 4050V MHz toward Columbia, South Carolina, on azimuth 119.9 degrees.

1482–CF–P–76, Same (KJC92), Charleston, South Carolina. Lat. 32°47'08" N., Long. 79°56'19" W. C.P. to add 4170V MHz toward Summerville, South Carolina, on azimuth 287.2 degrees.

1483–CF–P–76, Same (KJC91), Summerville, South Carolina. Lat. 32°5220 N., Long. 80°16'22" W. C.P. to add 4130V MHz toward Walterboro, South Carolina, on azimuth 272.1 degrees.

1484–CF–P–76, Same (KJC90), Walterboro, South Carolina. Lat. 32°53'16" N., Long. 80°48'34" W. C.P. to add 4170V MHz toward Allendale, South Carolina, on azimuth 287.8 degrees.

1485–CF–P–76, Same (KJC89), Allendale, South Carolina. Lat. 33°01'56" N., Long. 81°20'53" W. C.P. to add 4130H MHz toward Blackville, South Carolina, on azimuth 8.0 degrees.

1486–CF–P–76, Southern Bell Telephone & Telegraph Company (KJC88), Blackville, South Carolina. Lat. 33°24'55" N., Long. 81°17'02" W. C.P. to add 4170V MHz toward Swansea, South Carolina, on azimuth 28.0 degrees.

1487–CF–P–76, Same (KJC87), Swansea, South Carolina. Lat. 33°44'42" N., Long. 81°04'25" W. C.P. to add 4130H MHz toward Columbia, South Carolina, on azimuth 8.2 degrees.

1490–CF–P–76, Eastern Microwave, Inc. (KEM58), Helderberg Mtn., New York. Lat. 42°38'12" N., Long. 73°59'45" W. C.P. to add 6212.0H MHz, via power split, toward Queensbury, New York, on azimuth 21.9 degrees.

1491–CF–P–76, Same (KYZ74), Highland Lakes, New Jersey. Lat. 41°10'01" N., Long. 74°30'12" W. C.P. to add 6301.0H MHz, via power split, toward Walden, New York, on azimuth 29.3 degrees.

1503–CF–P–76, Same (KEM58), Helderberg Mtn., New York. Lat 42°38'12" N., Long. 73°59'45" W. C.P. to change polarity to 6182.4V MHz, 6212.0H MHz, 6241.7V MHz, 6271.4H MHz and 6301.0V MHz toward Saratoga Springs, New York; and change polarity to 6182.4H MHz, 6212.0V MHz, 6241.7H MHz, 6241.7H MHz, 6271.4V MHz and 6301.0H MHz toward Schenectady, New York.

1504–CF–P–76, Yankee Microwave (KYZ 85), Mt. Washington, New Hampshire. Lat. 44°16'13" N., Long. 71°18'13" W. C.P. to add 6078.6V MHz, via power split, toward Norway/South Paris, Maine, on azimuth 96.3 degrees.

1521–CF–P–76, Tower Communications Systems Corp. (New), Southgate, Indiana. Lat. 39°19'18" N. Long. 84°57'32" W. C.P. for a new station on 10935.0V MHz toward Hamilton, Ohio, on azimuth 68°42'.

1522–CF–P–76, Same (New) Hamilton, Ohio, Lat. 39°26'15" N. Long. 84°34'25" W. C.P. for a new station on 11545.0V MHz toward Middletown, Ohio, on azimuth 66°47'.

1531–CF–P–76, Yankee Microwave. (WAH 463), Nashua, New Hampshire. Lat. 42°44'26" N., Long. 71°27'15" W. C.P. to add 11505.0V MHz, via power split, toward Woburn, Maine, on azimuth 144.8 degrees.

1542–CF–P–76, Michigan Bell Telephone Company. (KQM41), Saginaw, Michigan. Lat. 43°25'51" N., Long. 83°56'24" W. C.P. to change polarity to 6100.9H MHz toward Midland, Michigan, on azimuth 29.4 degrees.

1543–CF–P–76, Same (WAS494), Midland Michigan, Lat. 43°36'58" N., Long. 84°12'01" W. C.P. to change polarity to 6412.2H MHz toward Saginaw, Michigan, on azimuth 134.3 degrees.

[FR Doc.76-2338 Filed 1-26-76;8:45 am]

[Docket No. 19558]

OVERSEAS DATAPHONE SERVICE

Report and Order Regarding Inquiry

1. The instant proceeding was initiated by Notice of Inquiry released July 31, 1972, 38 FR 7358, (36 FCC 2d 605), requesting comments regarding future Commission policies governing the provision of overseas "dataphone-type services."[1] Present authorizations to both international voice and record carriers preclude the use of facilities for dataphone-type services,[2] although AT&T's domestic authorizations contain no similar restriction on use of its message telephone network for record communications. Internationally, AT&T is essentially authorized to offer message toll telephone (MTS-voice only), private line voice, and program transmission services. The international record carriers (IRCs) offer a wide range of private line and switched record services, message telegraph and alternate voice/data (AVD)[3] private line services. Among the specific services the IRCs provide are Telex, a customer-to-customer switched record service using telegraph-grade connecting circuits; Datel, a switched message and facsimile record service capable of transmitting at speeds up to 1200 bits per second between customer locations, which uses voice transmission only for cuing, and which is capable of interconnection with domestic services of AT&T and Western Union Telegraph Company; and AVD private line services.

2. The present inquiry was designed to determine whether the public interest would be best served by authorizing customers to use their telephone for dataphone or similar services overseas and, if so, what carrier or carriers should be permitted to offer this service. To that end in our Notice of Inquiry we requested comments from carriers and other interested parties regarding demand for dataphone-type services; technical feasibility of providing such service over satellite as well as terrestrial circuits; current domestic dataphone usage; whether AT&T and/or the IRCs should offer the service and the costs, revenues, operating methods and arrangement with overseas cor-

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[1] "Dataphone-type services," as used herein, permit subscribers to the domestic message toll telephone service, who have secured appropriate equipment, to use that telephone service to send data, facsimile or record communications alternately with voice at usage sensitive rates. The term "DATAPHONE" is a registered trademark of the American Telephone and Telegraph Company (AT&T).

[2] The exception is the State of Hawaii, to which AT&T and Hawaiian Telephone Co. (HTC) jointly offer dataphone service (see AT&T et al. Data-Phone, 38 FCC 1222 (1965)).

[3] AVD is a voice-grade private line service in which the subscriber may use the circuit for both voice and record communications.

respondents associated with such offerings; the public interest considerations associated with authorizing the service; and any other relevant information. We have received a number of comments and replies[4] and the matter is now ripe for decision.

3. While all of the parties, with the exception of WUT, agree that there is significant demand for overseas dataphone, they are divided in their contentions as to which carriers should provide such service. AT&T along with API, Comsat, EIA, HTC, Magnavox, USITA and Xerox assert that both the voice and the record carriers should be authorized to offer overseas dataphone-type service with the record carriers interconnecting with AT&T's domestic public switchboard telephone network. The IRCs (ITT, RCA, TRT and WUI) contend that such a situation would not only give AT&T an insurmountable competitive advantage but would eventually threaten the viability of their other services such as Telex and Datel. Therefore the IRCs allege that their very survival is dependent upon our precluding AT&T from providing international dataphone service. They further indicate that they could offer a more efficient and personalized service than that proposed by AT&T, and RCA describes such a proposed offering in some detail. Before addressing the issue of how international dataphone service should be provided and which international carriers should be authorized to offer such service, we shall consider whether the record demonstrates the need for such service.

4. As noted, all parties filing comments, except WUT, assert that there is an existing and growing demand for overseas dataphone-type services. Several parties presented inquiries to their customers with responses showing a substantial interest in an international dataphone-type service. Independent studies of the future of international communications and projections of data communications growth, which were cited in the comments, provide an indication as to the extent of future potential demand for dataphone services. Such studies have resulted in the following data regarding international communications needs: 52,000 facsimile terminals were in use in 1972 with 290,000 terminals projected for 1980;[5] the number of data terminals is estimated to increase from some 600,000 in 1970 to about 8,000,000 by 1985;[6] and international leased line data circuits will grow at an annual rate of 21 percent for the years 1976 through 1980.[7] Data communications as a whole have been constantly growing as shown by the interest in the data market by overseas communications entities and the worldwide economic and business development of new data networks and services, and it appears that dataphone, if authorized, will add significantly to this growth. Domestically, dataphone-type services have increased at a rapid rate, and we find the record supports the view that a similar trend will occur internationally and rapid development of the market will result. We therefore find that the public interest would be served by one or more carriers offering dataphone-type services.

5. Also of concern in this Inquiry is the technical and operational feasibility of providing dataphone or a similar service via satellite. We raised this issue in our designation Order in order to resolve certain questions regarding the general acceptability of satellite circuits for data transmission. It is necessary, of course, to consider the effects of the longer transmission time associated with a geostationary satellite on the efficiency of data transfer when error control systems are required. The problem is one of assuring that maximum efficiency is obtained by using error control systems compatible with satellite delay times. Appropriate error detection equipment is presently available with better systems being developed. The uses of overseas dataphone-type services will not be such that the general user should be concerned with the delay factor and thus with investing in special error control equipment. However, such special equipment is available where required, and it appears feasible for dataphone-type services to be offered via satellite as well as by undersea cable. Therefore, we find no reason to preclude the provision of such service over satellite facilities.

6. From the comments received it appears that there are substantial differences between the dataphone-type services proposed by AT&T and those services proposed by the IRCs. Basically, AT&A's service as proposed would simply permit the customer to couple a data set, facsimile, or other equipment to his telephone (this equipment could be provided by the customer or by AT&T) and utilize Bell's existing switched telephone network. Thus the overseas dataphone-type services which AT&T envisions would be alternate uses of the existing world-wide switched message telephone network, a system which has been engineered primarily for voice. On the other hand, the record carriers propose to offer features significantly different from those of AT&T. Such specialized features, as outlined in RCA's comments to this inquiry, are code conversion, multi-address capability, camp-on capability, overseas conditioned channels, deferred data mode, speed conversion and other individualized features that AT&T has not proposed to offer. Code conversion would provide compatibility between customers using dissimilar code formats. Speed conversion would allow data machines with different speeds to operate with each other. Multi-address capability would enable the routing of a call to more than one destination. Preferred data mode would provide for storing and forwarding of data at a later time to one or more addresses. Camp-on capability would permit the calling party to hold on the line for a limited time while attempting to set up the call in the event a busy link, channel or subscriber is encountered. In addition it will be possible to store the called address and retry setting up the call at a later time. While the more specialized IRC services would apparently be priced higher than AT&T's offering, the IRC's customers would secure any or all of the specific features outlined above, thereby tailoring the service to their individual requirements and could, if appropriate, utilize services of both the IRCs and AT&T. Those who have no requirement for these specialized features and who find the capabilities of the existing AT&T switched telephone network sufficient for their needs would then utilize AT&T's basic service at a lower cost.[8]

7. AT&T alleges it can offers the basic dataphone-type services without making any significant additions or modifications to its public switched network. As a result, it contends it would incur no additional costs other than those associated with the handling of the anticipated increase in overseas telephone calls. Accordingly, AT&T's charges for such service would be the same as those for overseas message telephone service, as offered in § 3.7 of its tariff FCC No. 263. It should be noted that, for tariff purposes, the use of AT&T's transmission facilities for datapohne-type services is indistinguishable from their use for voice services, and voice service is expected to remain by far the greatest use of the faci-

[4] Comments were filed by the following: American Petroleum Institute (API), American Telephone and Telegraph Company (AT&T), Communications Satellite Corporation (Comsat), Computer and Business Equipment Manufacturers Association (CBEMA), Electronics Industries Association (EIA), The French Telegraph Cable Company (FTC), Hawaiian Telephone Company (HTC), ITT World Communications Inc. (ITT), Magnavox Company (Magnavox), RCA Global Communications, Inc. (RCA), TRT Telecommunications Corporation (TRT), United States Independent Telephone Association (USITA), Western Union International, Inc. (WUI), Western Union Telegraph Company (WUT), Xerox Corporation (Xerox).

Replies were filed by AT&T, Comsat, HTC, ITT, RCA, TRT, WUI and WUT. In addition, we received a letter from Estado Libre Asociade de Puerto Rico after the closing date for comments. Because of the importance of the issue, we shall consider the views expressed therein.

[5] Communications Report, December, 1972, pg. 32. (Both this and the following two references were cited by WUI in the attachments to its comments, pp. 3–4).

[6] Institute for the Future, The Future of the Telephone Industry, pg. 48 (1971).

[7] Data Transmission System Study Comsat Contract CSC–IS–369, May 1972.

[8] The services which we anticipate being offered by the IRCs are essentially an expansion of their present Datel and similar services, interconnected with the domestic switched message telephone system. We are aware that many of these proposed services cannot be considered to be included within our definition of dataphone service (*supra*, fn. 1) but are rather closer to the types of service which the IRCs are presently authorized to offer.

lities.[9] By contrast, RCA and ITT estimate some additional investments and operating expenses will be associated with providing an international service similar to that which AT&T proposes. Despite these additional costs, the IRCs assert that their rate for such service will be comparable to those of AT&T for similar services. However, the more specialized services outlined above (see paragraph 6), would require additional investment and thus higher rates.

8. Since the IRCs would appear to be unable to undercut AT&T's rates for basic dataphone-type services and since users of AT&T's proposed service would access its MTS network more easily than the IRCs' systems, the IRCs assert that AT&T would, if permitted entry, dominate the international market for such services. They further allege that their existing services, such as Telex, would be so seriously impacted that AT&T entry would undermine the international carrier industry as it now exists. In addition, the IRCs interpret established Commission policy as precluding AT&T from providing overseas dataphone-type service. In particular, they point to our TAT-4 Decision, 37 FCC 1151 (1964) in which the IRCs were authorized to offer leased circuits for AVD use. AT&T was not authorized to offer AVD, with the exception of certain pre-existing circuits for defense use, on the grounds that AT&T entry would undermine IRC services. Although the IRCs assert that the TAT-4 rationale should be applied in this Inquiry, we disagree that the situations are fully parallel.

9. The TAT-4 case involved an essentially new service, AVD, in which the subscriber leases a voice grade private line which he may use for both voice and record communications. Unlike the present situation, we found therein that both the IRCs and AT&T could offer the service with essentially the same investment and that competitive considerations dictated the authorization of only the IRCs to operate facilities in connection with that service. The instant inquiry involves the potential removal of a restriction which, in the case of AT&T, precludes use of the existing switched telephone network for a service which requires little or no additional investment by the carrier. The IRCs, by contrast, would incur some additional investment but have indicated that they will offer a more specialized service, capable of being tailored to the needs of the subscriber. Therefore, unlike the TAT-4 situation, we are faced here with different proposed services, meeting different subscriber needs, and for which different levels of investment will be required by the carriers.

10. Further, we believe the overriding consideration in this inquiry is in meeting an unmet need by giving the added flexibility to the customer to use the international switched message telephone system for both voice and data, similar to their authorized use of the domestic telephone network. Such a use would be privately beneficial without being publically detrimental and consistent with our long held view that the public's use of the public network should be made as flexible as possible. See "Hush-A-Phone v. U.S.," 99 U.S. App. DC 190, 193, 238 F. 2d 266, 269 (1956); "Hush-A Phone v. AT&T," 22 FCC 112, 113–114 (1957). This, as indicated above, can be done with little or no additional investment on the part of AT&T. These factors were not present in TAT-4 and distinguish the present situation from the circumstances of that case. This decision should in no way be construed as reversing this policy nor should it be interpreted so as to authorize AT&T to offer any other new services now or in the future.

11. Upon reviewing the record of this inquiry, we conclude that it is no longer appropriate to restrict the use of overseas message telephone service to voice-only. Customers with terminal equipment that is being used in conjunction with the domestic MTS network are prohibited from using that same equipment when making overseas calls despite a need for such service. We find this restriction not in the public interest. Accordingly, we are directing the Chief, Common Carrier Bureau, to accept applications from AT&T, pursuant to section 214 of the Act, 47 U.S.C. 214, to add dataphone-type services to the categories of service for which it may use its overseas facilities, as described herein.

12. We further find it to be in the public interest for the IRCs to expand their switched record services, such as Datel, and to interconnect their facilities with AT&T's domestic MTS network for this purpose. Thus, we anticipate that AT&T and the IRCs will offer different types of services and that the policy established herein does not promote competition for the sake of competition. (cf. "RCA Communications, Inc. v. F.C.C.," 346 U.S. 86 (1953), "Hawaiian Telephone Company v. F.C.C.," 498 F. 2d 771 (D.C. Cir., 1974)). We expect, instead, that the different services which will be rendered will meet different public needs. Thus, we are limiting AT&T's overseas dataphone services at this time to those which may be supplied via its existing overseas switched network, excluding dedicated private line services. Furthermore, if substantial modifications are to be made to the capabilities of this basic overseas telephone system (e.g., converting to all-digital, expanding the bandwidth of a voice channel, installing specialized switching or other central office equipment, or making any other modifications which will enable AT&T to offer specialized dataphone services), we shall require AT&T to obtain further Section 214 authorization prior to installing or operating such facilities.

13. We realize that the IRCs may suffer some losses as a result of removing the restriction on the use of the overseas MTS network. Despite the opportunity granted to them by this inquiry, the IRCs have not justified their allegation that they would suffer a significant decline in Telex and AVD service such as to have a substantial adverse effect upon the provision of their services to the public. It appears to us, rather, that removing the present restrictions will principally serve the occasional user who has insufficient traffic to subscribe to Telex or private line services. Domestically, DATAPHONE, TWX, Telex and voice grade private line services (which may be used for voice and data transmission) have all been offered for many years and a market appears to exist for them all. Additionally, dataphone-type service has been authorized between the U.S. Mainland and Hawaii with no indication of a negative impact on other services. Nothing in the record of this case indicates that the offering of overseas dataphone-type services will significantly curtail the market for most other data services. It may somewhat affect the demand for present IRC Datel service, but as RCA indicated in its reply comments, Datel is not a major service of the IRCs.[10] Further, Datel may be used by the IRCs as the backbone upon which to construct a specialized, switched data offering.

14. We realize that much of the IRCs' concern stems not from any immediate threat but from the long-range possibility that dataphone-type services may ultimately prove more flexible and cost-effective than Telex or AVD for the majority of users of international data services. Although the record does not support such a conclusion, this might be a potential threat to the viability of the IRCs if it should occur. However, our statutory mandate is to regulate telecommunications such that the public receives high quality service at the lowest cost. If the IRCs cannot effectively compete with dataphone-type uses of MTS, consistent with this Order, and if the service thereby fulfills a public need at cost-justified rates below those which the IRCs can justify for their own service, we shall not impose a protective umbrella to assure the IRCs a portion of the market.

15. The overseas dataphone-type services which we anticipate being offered are analogous to the MTS and private line services which AT&T and the specialized common carriers offer domestically. In our First Report and Order in Docket No. 18920 (the Specialized Common Carrier decision), 29 FCC 2d 870 (1971), we recognized, in the domestic private line field, "there is an increasing

[9] AT&T has predicted, assuming both it and the IRCs provide overseas dataphone-type services, that the weighted ratio between overseas message data and voice traffic over its facilities will be 0.02 (or 2.0%) by 1980. Weight ratio takes into consideration that use of overseas message data services in developed countries is greater than in other countries; e.g., in 1980 the data/voice ratio is estimated to be 0.035 in developed countries and 0.005 in other countries.

[10] The gross revenue from Datel service in calendar year 1974 for RCA, ITT and WUI (TRT does not offer this service) was $413,159. This is slightly over 0.1 percent of the IRCs 1974 operating revenue of $298,854,119. See Form 903 reports submitted pursuant to § 43.31 of our rules.

and widespread public demand for the availability of diverse and flexible means of meeting specialized communications requirements, and a substantial public need for the proposed service offerings" 29 FCC 2d 870, 907–8. Similarly we conclude that the record of the present inquiry clearly indicates an existing or latent public demand for both the type of service which AT&T proposes and the more specialized services outlined by the IRCs.

16. WUI has indicated strongly that it has had some difficulty obtaining interconnection with AT&T's domestic switched telephone network. It further asserts that such interconnection is necessary if the company is to serve customers outside of the gateway cities and thereby compete effectively with AT&T's international dataphone services. Although we are hopeful that appropriate agreements for interconnection can be reached, pursuant to our policies established for domestic common carriers,[11] we shall entertain pleadings from the international carriers regarding what facilities and interconnections, not presently provided, are necessary for their proposed services. Such pleadings are to be filed within thirty days of the release of this Report and Order, and replies are due within fifteen days thereafter. Upon reviewing these filings, we shall issue any appropriate orders, including any necessary conditions to certificates of convenience and necessity.

17. AT&T's present authorizations granted pursuant to Section 214 of the Communications Act are limited to existing specified services. Accordingly, if AT&T wishes to offer a dataphone service, it must file an application to modify such existing authorizations to include dataphone service, consistent with the policies established herein.

18. We have recently received several letters concerning this inquiry from certain of the international carrier parties to the proceeding. WUI renews its allegations concerning the failure of AT&T to provide appropriate interconnections to domestic Bell switch facilities. This issue has been disposed of above (paragraph 16). RCA asserts that the record in this case may be outdated and should be updated prior to rendering a decision. This proceeding is a policy-making inquiry based upon the general international communications environment and the need for the initiation of certain switched services. None of the assertions made in any of the recent letters lead us to believe that any significant changes have occurred which would lead us to change the policy decisions reached herein. Finally, several of the letters treat the relationship between the present inquiry and our Docket No. 18875 proceeding, and the contention is made that these inquiries should be combined. We disagree. Docket 18875 is a general policy-making inquiry into international facilities planning and coordination. The instant proceedings deals with our policy regarding a single international service, and does not directly relate to Docket No. 18875.

19. Finally, we raised issues in our Notice of Inquiry regarding carrier arrangements with foreign correspondents. No evidence was submitted that arrangements have been negotiated at this time, but, we require such arrangements to be made and submitted prior to our granting the carriers' applications.

20. *Accordingly, It is ordered,* That the Chief, Common Carrier Bureau, is directed to accept for filing applications from both the American Telephone and Telegraph Company and the international record carriers in accordance with this Report and Order.

21. *It is further ordered,* That Docket No. 19558 is terminated.

Adopted: January 8, 1976.

Released: January 19, 1976.

FEDERAL COMMUNICATIONS COMMISSION.
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.76-2341 Filed 1-26-76;8:45 am]

[11] Bell System Tariff Offerings, 46 FCC 2d 413 (1974); aff'd sub nom Bell Telephone Co. of Pennsylvania v. FCC, 503 F. 2d 1250 (1974); cert. denied, 43 U.S.L.W. 3654 (1975).

FEDERAL POWER COMMISSION

[Docket No. ER76-424]

APPALACHIAN POWER CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Appalachian Power Company ("APCo") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its FPC Rate Schedule No. 24, applicable to Carolina Power and Light Company.

APCo claims in its letter of transmittal that it has special operating characteristics which warrant, upon the good cause showing made by it, a delay in the implementation of § 35.14 for a period not to exceed one year. However, APCo states, in order to avoid even a technical non-compliance with the requirements of the Commission's Order No. 517, APCo has submitted a modified fuel adjustment clause which conforms to the requirements of § 35.14 of the Commission's Regulations.

Copies of the submittal made were served upon the affected customer and upon the Virginia State Corporation Commission and upon the West Virginia Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2279 Filed 1-26-76;8:45 am]

[Docket No. ER76-426]

APPALACHIAN POWER CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Appalachian Power Company ("APCo") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its FPC Rate Schedule No. 23, applicable to Kingsport Power Company.

APCo claims in its letter of transmittal that it has special operating characteristics which warrant, upon the good cause showing made by it, a delay in the implementation of § 35.14 for a period not to exceed one year. However, APCo states, in order to avoid even a technical non-compliance with the requirements of the Commission's Order No. 517, APCo has submitted a modified fuel adjustment clause which conforms to the requirements of § 35.14 of the Commission's Regulations.

Copies of the submittal made were served upon the affected customer and upon the Virginia State Corporation Commission and upon the West Virginia Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2280 Filed 1-26-76;8:45 am]

[Docket No. CP76-219]

ARKANSAS LOUISIANA GAS CO.

Application

JANUARY 20, 1976.

Take notice that on October 15, 1975, Arkansas Louisiana Gas Company (Applicant), P.O. Box 1734, Shreveport, Louisiana 71151, filed in Docket No.

CP76-219 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(b) of the regulations thereunder (18 CFR 157.7(b)), for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1976, and operation of certain natural gas purchase facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment its ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which it purchases which may become available from various producing areas generally coextensive with Applicant's pipeline system or other pipeline systems authorized to transport for or exchange gas with Applicant.

The total cost of the proposed facilities would not exceed $7,000,000, and the cost of any single project would not exceed $1,500,000, which costs Applicant states would be financed by cash on hand, cash generated from normal internal sources, short-term bank loans, and other short-term borrowings.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commisison by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commisison on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2302 Filed 1-26-76;8:45 am]

[Docket No. ER76-458]

ATLANTIC CITY ELECTRIC CO.

Supplemental Agreement

JANUARY 20, 1976.

Take notice that on January 12, 1976 Atlantic City Electric Company (ACE) tendered for filing Supplemental Agreement between it and the City of Vineland, New Jersey (VMS), dated June 1, 1975. This Agreement is designated as Supplement No. 1 to ACE's FPC Electric Rate Schedule 6. ACE states that the purpose of the Supplement is to bring the VMS agreement into accord with an Interconnection Agreement between ACE and Philadelphia Electric Company in the areas of definition of capacity, application of capacity requirements and revision to the service year.

ACE requests waiver of the notice requirements in order to allow this Agreement to become effective as of June 1, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1976. 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.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2303 Filed 1-26-76;8:45 am]

[Docket No. ER76-457]

BROCKTON EDISON CO.

Agreement for Standby Service

JANUARY 20, 1976.

Take notice that on January 12, 1976 Brockton Edison Company (Brockton) tendered for filing an Agreement, dated December 22, 1975, with the Town of Middleboro, under which Brockton provides standby services to Middleboro over certain 13.8 kv lines from Bockton's Mill Street substation in case of outage on the 115 kv radial line supplying Middleboro. Brockton states the charge for this service is $779 per month.

Brockton requests waiver of the thirty day notice requirement to permit the Agreement to be effective July 1, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1976. 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.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2304 Filed 1-26-76;8:45 am]

[Docket Nos. ER76-203, ER76-238, E-8187, E-8700]

BOSTON EDISON CO.

Order Amending Prior Order, Granting Waiver Upon Agreement To Refund Condition and Granting Petitions To Intervene

JANUARY 19, 1976.

By order issued November 26, 1975, in the above-captioned proceeding we accepted for filing and suspended until November 29, 1975 and December 5, 1975, certain rate changes proposed by Boston Edison Company (Edison) in Docket Nos. ER76-203 and ER76-238, respectively, and ordered refunds of all amounts previously collected. However, we conditioned such action upon Edison's option to file within 15 days of the issuance of said order, a request that the Commission accept the rate changes to be effective December 1, 1973 and March 15, 1973, the proposed effective dates, based on an agreement by Edison that the rates shall be subject to refund as of those effective dates, pending final disposition upon the conclusion of these proceedings.

On December 5, 1975, Edison filed an agreement to the refund condition in our November 26 order and requested that its proposed effective dates be permitted. Accordingly, we shall amend our November 26 order so as to grant waiver of the notice requirements to permit the subject rate changes to be effective as of their proposed effective dates.

On November 21, 1975, and December 5, 1975, New England Power Company (NEPCO) filed petitions to intervene in Docket Nos. ER76-203 and ER76-238, respectively.[1] The subject rate changes relate to transmission services being rendered to NEPCO by Edison under a transmission agreement which is the subject of Docket Nos. E-8187 and E-8700. In our November 26 order we consolidated Docket Nos. ER76-203 and ER76-238 with the proceedings in Docket Nos. E-8187 and E-8700 for purposes of decision. Inasmuch as NEPCO is an intervenor in Docket No. E-8187, we shall grant the instant petitions to intervene to the extent that any further rights and interests have been asserted.

[1] Public notice of the filing in Docket No. ER76-203 was issued on November 13, 1975, with protests or petitions to intervene due on or before November 21, 1975. In Docket No. ER76-238 notice was issued on November 21, 1975, with a due date of November 28, 1975.

The Commission finds. (1) Good cause exists to amend our November 26, 1975, order so as to grant waiver of the notice requirements of the Commission's regulations in order to permit the rate changes filed in Docket Nos. ER76-203 and ER76-238 to be effective as of December 1, 1973 and March 15, 1973, respectively, subject to refund.

(2) Good cause exists to grant NEPCO's petitions to intervene.

The Commission orders. (A) Ordering paragraphs (A), (B) and (C) of our November 26, 1975, order in these proceedings are hereby vacated.

(B) The requested waiver of the prior notice requirements of Section 35.3 of the Commission's Regulations is hereby granted.

(C) The proposed rate changes tendered for filing on October 28, 1975 and November 3, 1975, in Docket Nos. ER76-203 and ER76-238, respectively, are hereby accepted for filing and permitted to be effective as of December 1, 1973 and March 15, 1973, respectively, subject to refund.

(D) Subject to the rules and regulations of the Commission, NEPCO's petitions to intervene in Docket Nos. ER76-203 and ER76-238 are hereby granted; *Provided, however,* That participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in such petitions to intervene as well as its petition to intervene in Docket No. E-8187; *And Provided, further,* That such action shall not be construed as recognition by the Commission that such intervenor might be aggrieved because of any order or orders, of the Commission entered in these consolidated proceedings.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY KIDD PEAK, *Acting Secretary.*

[FR Doc.76-2281 Filed 1-26-76;8:45 am]

[Docket No. E-8884]

CAROLINA POWER & LIGHT CO.

Filing of Changes of Service Agreements

JANUARY 20, 1976.

Take notice that Carolina Power & Light Company on January 12, 1976, tendered for filing changes outlined below in its filed agreements with certain municipalities and electric membership corporations.

1. For the following municipalities and Piedmont EMC, the changes were as follows:

a. Town of Clayton—The delivery voltage is changed from 4 KV to 23 KV and the point of delivery is relocated from the secondary bus of Company's Clayton City 23/4 KV Substation to Company's Clayton 115/23 KV Substation.

b. City of Rocky Mount—The Service Agreement is amended to incorporate Paragraph 9, which provides for certain additional facilities supplied by Company at Customer's request.

c. City of Southport—The Service Agreement is amended by deleting Paragraph 7(c), which covered certain aspects due to late payment of electric bills rendered by Company. The late payment provision is now incorporated in Company's FPC Electric Tariff.

d. Piedmont EMC—The Roxboro Point of Delivery is relocated from Company's Roxboro 115/23/12 KV Substation to Company's Roxboro-Henderson 115 KV line. The delivery voltage for this point of delivery is also changed from 12 KV to 115 KV.

2. The North Hamlet Point of Delivery is hereby cancelled and terminated by this filing.

Any person desiring to be heard or to protect said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 5, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK, *Acting Secretary.*

[FR Doc.76-2305 Filed 1-26-76;8:45 am]

[Docket No. RP75-27]

CITIES SERVICE GAS CO.

Settlement Conference

JANUARY 19, 1976.

Take notice that on January 28, 1976, Staff is convening an informal conference of all interested persons for the purpose of discussing the issues in the above-referenced docket in Room No. 5200, at the offices of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C., at 10:00 a.m.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intevene by order of the Commission, attendance at the conference will not be deemed to authorize intervention as a party in the proceedings.

All parties will be expected to come fully prepared to discuss the merits of all issues concerning the lawfulness of the proposed rate increase and any procedural matters preparatory to a full evidentiary hearing or to make commitments with respect to such issues and any offers of settlement or stipulations discussed at the conference.

Copies of this notice are being mailed to all parties to the proceeding and to all of the jurisdictional customers.

MARY KIDD PEAK, *Acting Secretary.*

[FR Doc.76-2282 Filed 1-26-76;8:45 am]

[Docket No. CP76-204]

COLORADO INTERSTATE GAS CO.

Proposed Changes in FPR Gas Tariff

JANUARY 19, 1976.

Take notice that Colorado Interstate Gas Company, a division of Colorado Interstate Corporation (CIG), on January 2, 1976, tendered for filing proposed changes in its FPC Gas Tariff, Third Revised Volume No. 2. CIG states that the proposed changes will make effective Initial Rate Schedule X-57, a letter agreement which provides for the emergency sale of gas to Rocky Mountain Natural Gas Company, Inc. (Rocky Mountain), by CIG.

CIG is filing concurrently herewith, as its Initial Rate Schedule X-56, a letter agreement which provides for the short-term exchange of gas among CIG, Cascade Natural Gas Corporation (Cascade), and Mountain Fuel Supply Company (Mountain Fuel). This exchange of up to 6,000 Mcf per day is required to effectuate the emergency sale between CIG and Rocky Mountain, as the pipeline systems of CIG and Rocky Mountain do not interconnect.

CIG will charge Rocky Mountain 82.14 cents per Mcf for deliveries up to 6,000 Mcf per day and 108.54 cents per Mcf for all deliveries in excess of 6,000 Mcf per day.

An effective date of December 22, 1975, is required.

CIG states that copies of the filing were served upon certain of Mountain Fuel, Cascade, Rocky Mountain, and CIG's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 30, 1976. 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.

MARY KIDD PEAK, *Acting Secretary.*

[FR Doc.76-2283 Filed 1-26-76;8:45 am]

[Docket No. CP73-95]

COLUMBIA GAS TRANSMISSION CORP.

Petition To Amend

JANUARY 20, 1976.

Take notice that on December 5, 1975, Columbia Gas Transmission Corporation (Petitioner), 1700 MacCorkle Avenue S.E., Charleston, West Virginia 25314, filed in Docket No. CP73-95 a petition to amend the order of the Commission of December 6, 1972 (48 FPC 1203), as amended, pursuant to section 7(b) and (c) of the Natural Gas Act, to include in the certificate of public convenience

and necessity authorization to construct and operate certain storage facilities in the Artemas-B Storage Field, Bedford County, Pennsylvania, to delete authorization for certain facilities in said storage field, and for permission and approval to abandon certain facilities in said storage field that are said to be unnecessary by Petitioner, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner states that pursuant to its present authorization it has converted two existing production wells to storage and that it has constructed 2,700 feet of connecting lines to Line No. 29500, with measurement facilities for utilization for storage injections and withdrawals, and that it drilled one new authorized storage well. Petitioner states further that it has determined through testing that the Artemas-B Storage Field is not separated from Well No. L-4919 located southwest of the field, as it originally thought, by a north-south fault; and therefore, Petitioner proposes to extend the Artemas-B field by conversion of Well No. L-4919 to storage operations. Further Petitioner proposes to drill three additional wells and construct approximately 4.8 miles of storage pipeline and appurtenant measuring, regulating, heating and dehydrating facilities and associated compressor station piping facilities. It is stated that it would further be necessary for Petitioner to obtain storage rights on approximately 5,000 acres that would comprise the extended field. The estimated cost of the proposed facilities is said to be approximately $2,931,100, and the total cost of the existing and proposed facilities would be approximately $3,464,200. These estimated costs are said to include the acquisition for storage rights under the additional acreage.

The Artemas-B field as now proposed to be operated would have a capacity of 2,700,000 Mcf at an average static wellhead pressure of 1,900 psia, with estimated peak day withdrawal capacity of 32,000 Mcf of gas.

Petitioner requests that, in view of its plans to use Well No. L-4919 as a storage facility and to expand the storage field with that well and other facilities proposed herein, the Commission amend the existing authorization for the new storage well designated as Project II-(2). Petitioner further requests permission and approval to abandon measurement facilities, in previously authorized Project II-(1), now utilized in the Artemas-B field because, it is stated, said facilities will not be used or useful in the extended field.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 11, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2306 Filed 1-26-76;8:45 am]

[Docket No. RP75-8; PGA75-2]

COMMERCIAL PIPELINE COMPANY, INC.

PGA Filing

JANUARY 20, 1976.

Take notice that on January 12, 1976, Commercial Pipeline Company, Inc. (Commercial) tendered for filing Ninth Revised Sheets No. 3A reflecting Purchased Gas Adjustments and effective dates as set out below:

Sheet No.	Current adjustments	Cumulative adjustments	Effective date
3A Ninth revised.	$0.0499	$0.1292	Jan. 23, 1976

Commercial states that these revisions track precisely similar revisions in the tariff of Cities Service Gas Company, its sole supplier. Commercial requests waiver of notice of the extent required to permit said tariff sheets to become effective as proposed.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 3, 1976. 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.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2307 Filed 1-26-76;8:45 am]

[Docket No. ER76-320]

CONNECTICUT LIGHT AND POWER CO.

Order Denying Motion To Reject Petition for Clarification and Reconsideration, and Permitting Interventions

JANUARY 20, 1976.

By order issued December 31, 1975 we accepted for filing and suspended for two months an amended tariff, R-3 Rate, tendered for filing by the Connecticut Light and Power Company (CL&P). A Motion to Reject, Protest and Petition to Intervene was filed by the Connecticut Municipal Groups (Municipals) [1] on December 22, 1975.[2] An Answer to the Motion was filed by CL&P on December 31, 1975. A Protest and Petition to Intervene was filed by Bozrah Light & Power Company (Bozrah) on December 19, 1975. A Petition to Intervene was also filed by the Committee for Lower Utility Bills (CLUB) on December 8, 1975. On January 9, 1976, Municipals filed a petition for clarification and reconsideration of our December 31, 1975, order.

After careful review of the arguments raised by the Municipals' Motion and the Answer of CL&P, we have decided to deny the Municipals' Motion to Reject and their petition for clarification and reconsideration, to grant their petition to intervene and to uphold our order of December 31, 1975.

The initial argument raised by the Municipals' is that CL&P's filing should be rejected as failing to conform to § 35.13(b) of the Commission's Regulations, 18 CFR 35.13(b) (1975). The Municipals state that instead of complying with this regulation, "CL&P included a total of twenty-eight (28) pages of meaningless summary sheets." The use of rejetcion of a filing has been likened to a motion to dismiss on the face of the pleading "Municipal Light Boards of Reading and Wakefield v. F.P.C.", 450 F.2d 1341, 1348 (C.A. D.C. 1971). As the Court of Appeals stated, a rejection of a filing goes beyond a motion to dismiss.

> It is "peremptory form of response to filed tariffs" which classically is used not to dispose of a matter on the merits but rather as a technique for calling on the filing party to put its papers in proper form and order. Its use is not limited to defects of form. It may be used by an agency where the filing is so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket. (*Ibid.*, n. omitted)

Thus it appears that there are two situations within which a filing may properly be rejected: (1) Where the filing is not in proper form or order, e.g., rejection on the basis that the test year data older than seven months prior to the time of filing are too stale for use as the test period; and (2) where as a matter of substantive law the filing is a nullity so that no purpose would be served by continuing the proceeding. We find that the instant case presents neither of these situations. The form and order of the filing do not appear to be improper. We find that CL&P's filing substantially complies with our regulations, thus enabling us to make our decision to suspend the proposed rates for

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[1] City of Groton, Borough of Jewett City, Town of Wallingford, City of Norwich, and the Second and Third Taxing Districts of Norwalk; all of which are located in Connecticut.

[2] Although this filing was timely, it did not come to our attention because it was incorrectly filed under the caption of Docket Nos. ER76-326 and ER76-327.

two months and set the matter for hearing. This review, as the Court in Wakefield, supra, pointed out, is the purpose of the filing rules. Id., 1348. Accordingly, we find that CL&P's filing is not a nullity as a matter of substantive law and, therefore, should not be rejected. This, of course, does not preclude any of the parties, including Staff, from seeking further clarification and detail of CL&P's filing as they may deem necessary for their cases.

As part of their general argument that CL&P's filing should be rejected for lack of supporting evidence, the Municipals raise two issues which we believe merit additional discussion. The first issue is the Municipals' argument that CL&P's attempt to fully normalize and implement interperiod tax allocation should be summarily dismissed. A motion for summary dismissal should be granted only where there is no genuine dispute over a material fact. Rule 56, Federal Rules of Civil Procedure. Here, as CL&P's filing and the Municipals' Motion indicate, there is a dispute whether the timing differences of the tax effects of the change to normalization result in a tax deferral or a tax savings. This dispute raises questions of law and fact which should be dealt with by hearing, not by summary dismissal.

The second issue is the depreciation question. The Municipals claim that the depreciation rates included as part of CL&P's filing are not substantiated by any evidence. The Municipals rely on Mississippi River Transmission Corporation, Docket No. RP75-20, order issued July 3, 1975 for the proposition that the applicant must justify a change in depreciation rates by a fairly detailed showing of the methodology used and the factors taken into consideration. While the Municipals have correctly pointed to the order in Mississippi River Transmission, supra, as the standard for the showing required for depreciation rate changes, we find that our decision in that case does not control here. Mississippi River Transmission deals with a filing under the Natural Gas Act and the regulations thereunder, whereas here we are dealing with the requirements for filing by an electric utility. The filing regulations for a natural gas pipeline to show increased depreciation rates require much more detailed evidentiary support than is the case for an electric utility in the same circumstances. Compare 18 CFR 154.63(f) Statements D and H(2) (1975) (Natural gas) with 18 CFR 35.13 (b)(4)(iii) Statement I(1975) (Electric). A review of CL&P's filing shows that Statement I filed therein complies with our Regulations. We note that CL&P stated in its Answer that it will supply a copy of its depreciation study to the Municipals. We find that with regard to the depreciation rated filed herein, Statement I satisfies the requirements of our Regulations and therefore, this issue cannot be rejected. The issue of the proper depreciation rate is one which should be determined through the hearing process rather than at this early stage. The burden of showing the reasonableness of the proposed depreciation rates remains with CL&P.

A number of issues raised by the Municipals can be dispatched without the detailed discussion required by these other issues. The Municipals contend that we should reject CL&P's filing for failure to specify clearly the impact on the customers. This is not a reason for rejection of a filing. Therefore, we decline to reject on such grounds. The Municipals also take issue with the fuel clause and rate design filed by CL&P. We find that the fuel clause conforms to the requirements of Order No. 517. The cost of fuel and the rate design issue raised by the Municipals involve questions of law and fact which should be part of the hearing. Whether CL&Ps claimed rate of return is excessive and whether the failure to synchronize interest expenses improperly increases costs to the Municipals were raised by the Municipals Motion. These contentions are subjects which should be treated at hearing.

The Municipals' Motion also requests that we suspend that rates for five months. The Answer of CL&P requests that we suspend the rates for one day, or in the alternative, that we suspend the entire rate schedule, including the fuel clause, for the same period. In addition, Congressman Christopher J. Dodd filed a Motion for Reconsideration on January 12, 1975 asking that we suspend the rates for the full statutory period. Our order of December 31, 1975 suspended the rates for two months. This action was within our discretionary power, "Municipal Light Boards v. F.P.C.", 450 F.2d 1341 (C.A. D.C. 1971), and we see no reason to upset it here. The two months suspension applies to the entire rate schedule, including the fuel clause not just to individual parts.

The Commission finds. (1) Good cause exists to deny the Municipals' Motion for Rejection and its Petition for Clarification and Reconsideration and Congressman Dodd's Motion for Reconsideration.

(2) Participation by the Municipals, Bozrah and CLUB may be in the public interest and good cause exists for permitting their intervention.

The Commission orders. (A) The Municipals' Motion for Rejection and Petition for Clarification and Reconsideration and Congressman Dodd's Motion for Reconsideration are hereby denied.

(B) The Municipals, Bozrah and CLUB are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; *And Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2319 Filed 1-26-76;8:45 am]

[Docket No. ER76-448]

DAYTON POWER AND LIGHT CO.

Filing

JANUARY 20, 1976.

Take notice that on January 7, 1975, the Dayton Power and Light Company (DP&L) tendered for filing Modification No. 1 dated December 15, 1975 to the Interconnection Agreement, dated as of May 10, 1972 between DP&L and the City of Piqua, Ohio.

DP&L states that Modification No. 1 pertains only to a change in the term of the Interconnection Agreement by an amendment to Paragraph 25, "Term of Agreement". The Interconnection Agreement provided in essence that the Agreement would remain in effect for an initial period of five years from the date the rate schedules were permitted to become effective under the Federal Power Act and thereafter for successive five year periods unless terminated by either party by notice given at least one year prior to the expiration of a five year period. Modification No. 1 provides that the initial period of the Interconnection Agreement end on May 9, 1977 which is five years after the date of the initial Interconnection Agreement.

DP&L states that the change in the initial term places the other provisions of Paragraph 25 of the Agreement within the five-year phase from the time the Agreement was entered into and more closely reflects the intent of the parties as to the future timing of such provisions.

DP&L states that a copy of Modification No. 1 has been served upon the Director of Utilities, City of Piqua, Piqua, Ohio.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 30, 1976. 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.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2308 Filed 1-26-76;8:45 am]

[Docket No. RP72-134; DCA76-1B]

EASTERN SHORE NATURAL GAS CO.

Purchased Gas Cost Adjustment to Rates and Charges

JANUARY 19, 1976.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore), on January 13, 1976, tendered for filing Second Revised Fifteenth Revised Sheet No. 3A and Second Revised Fifteenth Revised PGA-1 to its FPC Gas Tariff, Original Volume No. 1. These revised tariff sheets, effective December 1, 1975, are to be substituted for Eastern Shore's December 11, 1975 filing for reimbursement of demand charge credits (Revised Fifteenth Revised Sheet No. 3A and Revised Fifteenth Revised PGA-1).

Pursuant to § 154.51 of the regulations under the Natural Gas Act, Eastern Shore respectfully requests waiver of the notice requirements of § 154.22 of those regulations and of section 20.2 of the General Terms and Conditions of its Tariff, to the extent necessary, to permit the tariff sheets submitted herewith to become effective as of December 1, 1975.

Copies of this filing have been mailed to each of the Company's jurisdictional customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1976. 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 available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2284 Filed 1-26-76;8:45 am]

[Docket No. RP 72-134; PGA 76-7]

EASTERN SHORE NATURAL GAS CO.

Purchased Gas Cost Adjustment to Rates and Charges

JANUARY 19, 1976.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on January 13, 1976, tendered for filing Third Revised Fourteenth Revised Sheet No. 3A and Third Revised Fourteenth Revised PGA-1 to its FPC Gas Tariff, Original Volume No. 1. These revised tariff sheets, effective November 16, 1975, adjust Eastern Shore's rate schedules to reflect the settlement rates of Transcontinental Gas Pipe Line Corporation (Transco), adjusted for the rate change contained in the tariff sheets implementing Transco's 1975-1976 curtailment plan, which tariff sheets were filed on December 4, 1975, and became effective November 16, 1975, in accordance with the Commission's Order of November 28, 1975, in Docket No. RP 72-99.

Pursuant to § 154.51 of the regulations under the Natural Gas Act, Eastern Shore respectfully requests waiver of the notice requirements of § 154.22 of those regulations and of § 20.2 of the General Terms and Conditions of its Tariff, to the extent necessary, to permit the tariff sheets submitted to become effective as of November 16, 1975, to coincide with the effective date of Transco's rate changes. In support thereof, Eastern Shore states that Transco's December 15 filing of its revised tariff sheets prohibited Eastern Shore from fulfilling the prescribed notice requirements under the General Terms and Conditions of its Tariff.

Copies of the filing have been mailed to each of the Company's jurisdictional customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (10 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1976. 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 available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2285 Filed 1-26-76;8:45 am]

[Docket No. ID-1777]

GEORGE H. GOWDY

Application

JANUARY 20, 1976.

Take notice that on January 2, 1976, George H. Gowdy, (Applicant) filed an application with the Federal Power Commission. Pursuant to Section 305(b) of the Federal Power Act, Applicant seeks authority to hold the following positions:

Director, Vermont Yankee Nuclear Power Corporation, Public Utility.
Director, Maine Yankee Atomic Power Company, Public Utility.
Director, Connecticut Yankee Atomic Power Company, Public Utility.
Director, Yankee Atomic Electric Company, Public Utility.

Vermont Yankee is a Vermont corporation which has constructed a nuclear power plant at Vernon, Vermont and sells the output to its utility company stockholders.

Maine Yankee has constructed a nuclear power plant in Wiscasett, Maine. The Company will sell its entire output to its utility company stockholders.

Connecticut Yankee has constructed a nuclear plant at Haddam, Connecticut. The Company will sell its entire output to its utility company stockholders.

Yankee Atomic Electric Company is a Massachusetts corporation which has constructed a nuclear power plant at Rowe, Massachusetts and sells the output to its utility company stockholders.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 6, 1976, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2309 Filed 1-26-76;8:45 am]

[Docket No. E-9091]

GEORGIA POWER CO.

Extension of Procedural Dates

JANUARY 20, 1976.

On January 14, 1976, Staff Counsel filed a motion to extend the procedural dates fixed by order issued October 29, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Staff Testimony, March 16, 1976.
Service of Intervenor Testimony, March 30, 1976.
Service of Company Rebuttal, April 20, 1976.
Hearing, May 11, 1976 (10 a.m. f.d.t.).

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2310 Filed 1-26-76;8:45 am]

[Docket No. ER76-455]

ILLINOIS POWER CO.

Filing Modification No. 1 to Interconnection Agreement

JANUARY 20, 1976.

Take notice that Illinois Power Company (Illinois Power) on January 9, 1976, tendered for filing proposed Modification No. 1 to the Interconnection Agreement dated August 26, 1974, between Illinois Power and the City of Highland. Modification No. 1 proposes that effective September 1, 1975, section 3 (Short-Term Firm Capacity and Energy) and section 5 (Maintenance Power), of Article IV (Service to be Rendered and Rates) be modified as follows:

(1) Increase the reservation charge for Short-Term Firm Capacity from 10 cents to 11 cents per day or 50 cents to 55 cents per week for each kilowatt of power reserved.

(2) Increase the reservation charge for Maintenance Power from 8 cents to 9 cents or 40 to 45 cents per week for each kilowatt of power reserved. Should unforeseen events force a curtailment of power by the supplying party on any day for any part of that day, the charges shall be reduced by 9 cents per day for each kilowatt so curtailed, but no more than 45 cents per week per kilowatt.

Illinois Power states that the 55 cents rate per kilowatt per week for Short-Term Firm Capacity maintains a differential between Firm Capacity and Maintenance Power identical to that existing under the original agreement. This differential is to compensate for the reserve component included in furnishing firm capacity.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 30, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2311 Filed 1-26-76;8:45 am]

[Docket No. RI75-21]

INDEPENDENT OIL & GAS ASSOCIATION OF WEST VIRGINIA

Certification of Proposed Settlement Agreement

JANUARY 19, 1976.

Take notice that on December 24, 1975, the Presiding Administrative Law Judge certified to the Commission a proposed settlement agreement in the above referenced docket. The record of the proceeding was also certified for the Commission's use in reviewing the proposed settlement. The proposed settlement would resolve all outstanding issues.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 30, 1976. Replies to comments are due on or before February 9, 1976. Comments and replies to comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection. It will not be necessary to file additional comments pursuant to this notice if comments have been previously filed in accordance with the notice of the Administrative Law Judge.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2286 Filed 1-26-76;8:45 am]

[Docket No. ER76-427]

INDIANA & MICHIGAN ELECTRIC CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Indiana & Michigan Electric Company ("I&M") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its FPC Rate Schedule No. 54 applicable to Wayne County Rural Electric Membership Corporation.

I&M claims in its letter of transmittal that under previous orders of the Federal Power Commission ("Commission") its unilateral submission of a modification of a fuel adjustment clause is barred under the Sierra Pacific-Mobile doctrine, but that in order to avoid even a technical non-compliance with the requirements of the Commission's Order No. 517, it has submitted a modified fuel adjustment clause which conforms to the requirements of Section 35.14 of the Commission's Regulations. I&M also claims that it has special operating characteristics which warrant, upon the good cause showing made by it, a delay in the implementation of Section 35.14 for a period not to exceed one year.

Copies of the submittal made were served upon the affected customer and upon the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2287 Filed 1-26-76;8:45 am]

[Docket No. ER76-428]

INDIANA & MICHIGAN ELECTRIC CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Indiana & Michigan Electric Company ("I&M") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its FPC Electric Tariffs MRS and WS, applicable to certain of its municipal wholesale customers.

I&M claims in its letter of transmittal that it has special operating characteristics which warrant, upon the good cause showing made by it, a delay in the implementation of § 35.14 for a period not to exceed one year. However, I&M states, in order to avoid even a technical non-compliance with the requirements of the Commission's Order No. 517, I&M has submitted a modified fuel adjustment clause which conforms to the requirements of Section 35.14 of the Commission's Regulations.

Copies of the submittal made were served upon the affected customers and upon either the Public Service Commission of Indiana or the Michigan Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2288 Filed 1-26-76;8:45 am]

[Docket No. ER76-429]

INDIANA & MICHIGAN ELECTRIC CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Indiana & Michigan Electric Company ("I&M") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its FPC Rate Schedule No. 20, applicable to Commonwealth Edison Company.

I&M claims in its letter of transmittal that it has special operating characteristics which warrant, upon the good cause showing made by it, a delay in the implementation of § 35.14 for a period not to exceed one year. However, I&M states, in order to avoid even a technical non-compliance with the requirements of the Commission's Order No. 517, I&M has submitted a modified fuel adjustment clause which conforms to the requirements of § 35.14 of the Commission's Regulations.

Copies of the submittal made were served upon the affected customer and upon the Michigan Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2289 Filed 1-26-76;8:45 am]

[Docket No. ER76-430]

INDIANA & MICHIGAN ELECTRIC CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Indiana & Michigan Electric ("I&M") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its FPC Rate Schedule No. 58 applicable to the City of Richmond, Indiana.

I&M claims in its letter of transmittal that under previous orders of the Federal Power Commission ("Commission") its unilateral submission of a modification of a fuel adjustment clause is barred under the Sierra Pacific-Mobile doctrine, but that in order to avoid even a technical non-compliance with the requirements of the Commission's Order No. 517, it has submitted a modified fuel adjustment clause which conforms to the requirements of Section 35.14 of the Commission's Regulations. I&M also claims that it has special operating characteristics which warrant, upon the good cause showing made by it, a delay in the implementation of § 35.14 for a period not to exceed one year.

Copies of the submittal made were served upon the affected customer and upon the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2290 Filed 1-26-76;8:45 am]

[Docket No. ER76-431]

INDIANA & MICHIGAN ELECTRIC CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Indiana & Michigan Electric Company ("I&M") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its Firm Power Service Schedule, a part of its FPC Rate Schedule No. 22, applicable to Northern Indiana Public Service Company.

I&M claims in its letter of transmittal that it has special operating characteristics which warrant, upon the good cause showing made by it, a delay in the implementation of § 35.14 for a period not to exceed one year. However, I&M states, in order to avoid even a technical non-compliance with the requirements of the Commission's Order No. 517, I&M has submitted a modified fuel adjustment clause which conforms to the requirements of § 35.14 of the Commission's Regulations.

Copies of the submittal made were served upon the affected customer and upon the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2291 Filed 1-26-76;8:45 am]

[Docket No. ER76-432]

INDIANA & MICHIGAN ELECTRIC CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Indiana & Michigan Electric Company ("I&M") on December 31, 1975 tendered for filing a modification to the fuel adjustment clause contained in its FPC Rate Schedule No. 22, applicable to Northern Indiana Public Service Company. I&M states in its letter of transmittal that the fuel adjustment clause modification filed by it relates solely to Service Schedule F of its Rate Schedule No. 22, which Schedule affects only unit purchases by the affected customer.

Copies of the transmittal letter and its enclosures were served upon the affected customer and upon the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2292 Filed 1-26-76;8:45 am]

[Docket No. ER76-433]

INDIANA & MICHIGAN ELECTRIC CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Indiana & Michigan Electric Company ("I&M") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its FPC Rate Schedule No. 50 applicable to Noble County Rural Electric Membership Corporation.

I&M claims in its letter of transmittal that under previous orders of the Federal Power Commission ("Commission") its unilateral submission of a modification of a fuel adjustment clause is barred under the Sierra Pacific-Mobile doctrine, but that in order to avoid even a technical non-compliance with the requirements of the Commission's Order No. 517, it has submitted a modified fuel adjustment clause which conforms to the requirements of Section 35.14 of the Commission's Regulations. I&M also claims that it has special operating characteristics which warrant, upon the good cause showing made by it, a delay in the implementation of § 35.14 for a period not to exceed one year.

Copies of the submittal made were served upon the affected customer and upon the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C.

20426, in accordance with §§ 1.8 and 1.10 of the Commissions' rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2293 Filed 1-26-76;8:45 am]

[Docket No. ER76-434]

INDIANA & MICHIGAN ELECTRIC CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Indiana & Michigan Electric Company ("I&M") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its FPC Rate Schedule No. 52 applicable to Paulding-Putnam Rural Electric Cooperative, Inc.

I&M claims in its letter of transmittal that under previous orders of the Federal Power Commission ("Commission") its unilateral submission of a modification of a fuel adjustment clause is barred under the Sierra Pacific-Mobile doctrine, but that in order to avoid even a technical non-compliance with the requirements of the Commission's Order No. 517, it has submitted a modified fuel adjustment clause which conforms to the requirements of Section 35.14 of the Commission's Regulations. I&M also claims that it has special operating characteristics which warrant, upon the good cause showing made by it, a delay in the implementation of Section 35.14 for a period not to exceed one year.

Copies of the submittal made were served upon the affected customer and upon the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2294 Filed 1-26-76;8:45 am]

[Docket No. ES76-33]

IOWA POWER AND LIGHT CO.

Application

JANUARY 19, 1976.

Take notice that on January 9, 1976, Iowa Power and Light Company (Applicant) of Des Moines, Iowa, filed an application seeking an order pursuant to Section 204 of the Federal Power Act authorizing issuance of $30,000,000 principal amount of First Mortgage Bonds due 2006, and 700,000 shares of Additional Common Stock, par value $10 per share.

Applicant proposed to issue the aforesaid First Mortgage Bonds under the Indenture of Mortgage and Deed of Trust dated August 1, 1943, to Harris Trust and Savings Bank and R. H. Long, Trustees, such Indenture to be supplemented by a Thirteenth Supplemental Indenture to be dated as of March 1, 1976. The interest rate of the Bonds will be determined by competitive bidding pursuant to the Commission's Regulations under the Federal Power Act. The Bonds will not be redeemable prior to March 1, 1981, at the option of the Company through a refunding which has an interest cost to the Company less than the interest cost of the Bonds.

Applicant proposes to issue the aforesaid 700,000 shares of Common Stock, par value $10 per share, under competitive bidding pursuant to the Commission's regulations under the Federal Power Act.

The purposes for which the New Bonds and Additional Common Stock are to be issued are to obtain permanent financing of the Company's construction program and to refund certain short-term borrowing obligations.

Applicant is incorporated under the laws of the State of Iowa with its principal business office at Des Moines, Iowa, and is engaged in the electric and gas utility business within the State of Iowa.

Any person desiring to be heard or to make any protest with reference to the Application should on or before February 13, 1976, file with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2295 Filed 1-26-76;8:45 am]

[Docket No. E-9485]

KANSAS GAS AND ELECTRIC CO.

Further Extension of Procedural Dates

JANUARY 20, 1976.

On January 15, 1976, Staff Counsel filed a motion to extend the procedural dates fixed by order issued August 6, 1975, as most recently modified by notice issued December 4, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Staff Testimony, April 22, 1976.
Service of Intervenor Testimony, May 5, 1976.
Service of Company Rebuttal, May 18, 1976.
Hearing, May 25, 1976 (10 a.m., e.d.t.).

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2312 Filed 1-26-76;8:45 am]

[Docket No. ER76-423]

MICHIGAN POWER CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Michigan Power Company ("MPCo") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its FPC Electric Tariff MRS, applicable to certain municipal customers.

MPCo claims in its letter of transmittal that it has special operating characteristics which warrant, upon the good cause showing made by it, a delay in the implementation of § 35.14 for a period not to exceed one year. However, MPCo states, in order to avoid even a technical non-compliance with the requirements of the Commission's Order No. 517, MPCo has submitted a modified fuel adjustment clause which conforms to the requirements of § 35.14 of the Commission's Regulations.

Copies of the submittal made were served upon the affected customer and upon the Michigan Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2296 Filed 1-26-76;8:45 am]

[Docket No. CP76-14; Docket No. CI76-218]

NATURAL GAS PIPELINE CO. OF AMERICA AND PHILLIPS PETROLEUM CO.

Notice Denying Motions and Postponing Date of Hearing

JANUARY 20, 1976.

By notice issued January 13, 1976, in the above matter the time was extended to and including February 26, 1976, for all parties to file testimony, but the hearing date was not changed.

On January 13 and January 15, 1976, respectively, Phillip Petroleum Company and Mobil Oil Corporation also filed motions for extension of the procedural dates.

Upon consideration, notice is hereby given that the requests for further extensions to file tesimony are denied. The procedural dates are as follows:

Testimony by Applicants and all supporting parties, February 26, 1976, (fixed by January 13, 1976 notice).
Hearing, March 23, 1976 (10 a.m. e.s.t.).

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2313 Filed 1-26-76;8:45 am]

[Docket No. CP76-40]

NORTHERN NATURAL GAS CO.

Petition To Amend

JANUARY 20, 1976.

Take notice that on December 29, 1975, Northern Natural Gas Company (Petitioner), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP76-40 a petition to amend the Commission order of November 26, 1975 (54 FPC ____), issuing a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act to include authorization to sell to the City of Ponca, Nebraska, an additional 50 Mcf of temporary storage service pursuant to Petitioner's Rate Schedule TSS-1, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner states that the proposed service is required to assure the City of Ponca a supply of gas adequate to serve Ponca's small and firm gas customers during the 1975-76 heating season. Petitioner states that it is authorized by the Commission, *inter alia,* to sell to Ponca up to 50 Mcf of natural gas per day pursuant to Rate Schedule TSS-1 and that the volumes of gas that are proposed to be sold in the instant petition to amend would be in addition to the initial 50 Mcf.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

MARY KIDD PEAK,
Secretary.

[FR Doc.76-2314 Filed 1-26-76;8:45 am]

[Docket No. ER76-451]

NORTHERN STATES POWER CO.

Filing of Supplement to Interconnection and Interchange Agreement

JANUARY 20, 1976.

Take notice that Northern States Power Company (NSP), on January 7, 1976, tendered for filing Supplement No. 14 to the Interconnection and Interchange Agreement between Dairyland Power Cooperative, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin).

NSP states that Supplement No. 14, dated January 2, 1976 provides a Fourteenth Revised Exhibit A, a Fourteenth Revised Page B-1, and Circuit Diagram Sheets adding the Eidsvold, Alma No. 6, and Cadott Interconnections to the terms of the Agreement.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before January 30, 1976. 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. Copies of this application are on file with the Commission and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2315 Filed 1-26-76;8:45 am]

[Docket No. E-9148]

NORTHERN STATES POWER CO. (MINNESOTA)

Notice of Filing

JANUARY 19, 1976.

Take notice that on January 8, 1976, Northern States Power Company of Minnesota (Northern States) tendered for filing rate schedule revisions and related materials which the company states are in compliance with the Commission's order of October 14, 1975, requiring Northern States to file revised tariff sheets reflecting the exclusion of construction work in progress (CWIP) from its rate based filed in this proceeding and accordingly to make the appropriate refunds. The company states that this elimination of CWIP resulted in a net decrease in the cost of service of $141,000 for the 1975 test year. It further notes that the revised rates will produce a decrease of $139,000 in revenues. The company stated that it is currently engaged in distributing refunds.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 5, 1976. 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 available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2297 Filed 1-26-76;8:45 am]

[Docket No. ER76-422]

OHIO POWER CO.

Filing of Proposed Modification of Fuel Adjustment Clause

JANUARY 19, 1976.

Take notice that Ohio Power Company ("Ohio") on December 31, 1975 submitted a proposed modification of the fuel adjustment clause contained in its FPC Rate Schedule No. 35, applicable to Toledo Edison Company. Ohio claims in its letter of transmittal that its service agreement with Toledo Edison is a fixed rate contract and that any attempt by it to unilaterally file a revised fuel adjustment clause conforming to the requirements of Section 35.14 of the Commission's Regulations is barred as a matter of law. Ohio further states that in order to avoid even a technical noncompliance with the requirements of § 35.14 it has submitted to the Commission a fuel adjustment clause modification which complies with § 35.14.

Copies of the submittal were served upon the affected customer and upon the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commis-

sion and are available for public inspection.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2298 Filed 1-26-76;8:45 am]

[Docket No. ER76-447]

PACIFIC POWER & LIGHT CO.

Filing

JANUARY 19, 1976.

Take notice that on December 15, 1975, Pacific Power & Light Company (PP&L) tendered for filing an annual revision of The Load and Resource Forecast, Exhibit A, dated September 23, 1975, to PP&L's contract with Cheyenne Light, Fuel and Power Company, dated May 5, 1972, and designated as Pacific Power and Light Company Rate Schedule FPC No. 108.

PP&L states that each year a revised Exhibit A is submitted by Cheyenne Light, Fuel and Power Company in accordance with Article 2-d of the contract.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1976. 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 Commision and are available for public inspection.

MARY KIDD PEAK,
Secretary.

[FR Doc.76-2299 Filed 1-26-76;8:45 am]

[Docket No. CP76-209]

PANHANDLE EASTERN PIPE LINE CO.

Application

JANUARY 20, 1976.

Take notice that on December 23, 1975, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP76-209 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a compressor station, pipeline and related facilities appurtenant to Applicant's West End pipeline systems in Kansas, Oklahoma, and Texas gas producing areas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that as a result of the decline in reservoir pressure, a number of gas wells lack ability to produce contractually committed reserves of natural gas. Because of this decline in reservoir pressure, it is alleged that the amount of compression required to raise natural gas from field pressure to mainline pressure is increasing rapidly. The proposed facilities are said to be designed to decrease the rate of deliverability loss and permit the continued production at a level to assure more nearly Applicant's receiving all of its gas from older fields.

Applicant proposes to construct and operate in three segments 3.2 miles of 8-inch pipeline in the Ulysses Area, Grant County, Kansas, as replacement, 1.8 mile of 10-inch pipeline in the Hugoton Area, Stevens County, Kansas as loop line, 3.5 miles of 12-inch pipeline in the Richland Area, Texas County, Oklahoma, as loop line, 1.6 mile of 8-inch pipeline in the Putnam-Lenora Area, Dewey County, Oklahoma, as loop line, and 3.3 miles of 6-inch pipeline in the West Panhandle Area, Carson County, Texas, as replacement. Applicant estimates that the total cost of the proposed pipeline would be approximately $911,000.

Applicant further requests that the Commission authorize the construction and operation of a 2,400 horsepower compressor station, the Richland compressor station, in Texas County, Oklahoma. Applicant estimates that the cost of the proposed station would be approximately $1,037,000.

The estimated cost of all of the facilities would be approximately $2,096,000, including contingency and interest costs. Applicant states that the project would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1976, file with the Federal Power Commission, Washigton, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2316 Filed 1-26-76;8:45 am]

[Docket No. RP76-53]

SOUTH TEXAS NATURAL GAS GATHERING CO.

Proposed Changes in Rate

JANUARY 20, 1976.

Take notice that on January 12, 1976, South Texas Natural Gas Gathering Company (South Texas) tendered for filing proposed changes in its FPC Gas Rate Schedule Nos. 1 and 2. The proposed changes would increase jurisdictional revenues by $6,775,298 based on the 12 month period ending September 30, 1975, as adjusted. South Texas requests that the proposed rate changes become effective February 12, 1976.

South Texas states that with respect to Rate Schedule No. 1, such increased rate is provided for in the contract comprising the rate schedule but the rate is limited by the contract and does not permit South Texas to earn the rate of return claimed within the instant filing. As to Rate Schedule No. 2, South Texas states that the increased rate to recover its cost of service is authorized pursuant to the terms of said rate schedule and is consistent with the settlement in the matter of Shell Oil Company, et al., Docket No. RI72-240, which provided that South Texas would not file a rate increase under such rate schedule for 3 years from the date of the Commission's order issued January 10, 1973.

South Texas states that copies of this filing were served upon the affected jurisdictional customers, the New York Public Service Commission, and other interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 2, 1976. 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.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2317 Filed 1-26-76;8:45 am]

[Docket No. RP73-64; PGA76-1]

SOUTHERN NATURAL GAS COMPANY

Proposed Changes in FPC Gas Tariff

JANUARY 20, 1976.

Take notice that Southern Natural Gas Company (Southern), on January 12, 1976, tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1, to become effective January 1, 1976 and January 2, 1976, Southern states that such filing is in compliance with the Commission's Order Accepting for Filing and Suspending Proposed PGA Increase, Establishing Hearing Procedures, and Instituting Investigation Under section 5 of the Natural Gas Act, issued December 31, 1975.

Ordering Paragraph (F) of the Commission's aforesaid order required Southern to file revised tariff sheets reflecting the "exclusion of costs for purchased gas that will not be certified and flowing as of January 1, 1976." Both Alternate Fifteenth Revised Sheet No. 4A and Sixteenth Revised Sheet No. 4A reflect a reduction of 12,770,000 Mcf of non-certificated new supplies from Shell Oil Company in Grand Isle Block 76 Field since a certificate was not issued as of January 1, 1976. Both tariff sheets also include an adjustment in the cost of gas purchased from United Gas Pipe Line Company as a result of the Commission's Order Accepting for Filing and Suspending Proposed PGA Rate Increase, Establishing Hearing Procedures, and Instituting Investigation Under section 5 of the Natural Gas Act, issued December 31, 1975 in United Gas Pipe Line Company, Docket No. RP72-133 (PGA76-1). The above adjustments reduce Southern's commodity and one-part rates .155¢ per Mcf below those rates included in the original November 14, 1975 filing.

Additionally, Alternate Fifteenth Revised Sheet No. 4A, to be effective for the one day of January 1, 1976, reflects the elimination of small producer purchases in excess of the rate levels resulting from the "130% formula" prescribed by Opinion No. 742. The attached Exhibit A reflects the amount of the small producer purchases above the "130% formula" and the rate impact of such costs. The jurisdictional cost impact of $71,007 has a rate impact of .012¢ per Mcf on the commodity and one-part rates.

Copies of the filing are being served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commisison's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 5, 1976. 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.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2318 Filed 1-26-76;8:45 am]

[Docket Nos. RP71-130; RP72-58; RP75-111]

TEXAS EASTERN TRANSMISSION CORP.

Certification of Proposed Settlement Agreement

JANUARY 19, 1976.

Take notice that on January 17, 1976, Presiding Administrative Law Judges Gordon and Howe certified to the Commission a Stipulation and Agreement, drafted by the partits to these proceedings as a proposed settlement of the issues raised in the proceedings in Docket Nos. RP75-111 and in the consolidated proceedings in Docket No. RP71-130 and RP72-58. The issues concerning the extraordinary relief petitions in Docket Nos. RP74-39-22, RP74-39-23, RP74-39-24, and RP74-39-25, which were consolidated with Docket No. RP75-111, are specifically not intended to be affected by the proposed settlement. Those petitions were the subject of an initial decision issued by Judge Howe on November 24, 1975. A second initial decision was issued by Judge Howe on December 17, 1975 on issues in the Docket No. RP75-111 proceeding on which, according to the initial decision, the settlement proposal is silent. The certification expresses no views as to the merits of the proposed settlement insofar as it covers the issues in Docket No. RP71-130 and RP72-58; however, an addendum to the certification by Judge Howe submits his views on the proposed settlement so far as it pertains to the proceedings in Docket No. RP75-111.

The proposed settlement agreement provides a permanent curtailment plan for Texas Eastern's system based in large part on the currently effective curtailment plan which follows the basic end-use priorities of the Commission's Order No. 467-B with the variation that firm industrial uses of less than 300 Mcf per day are included in Priority 2. The proposed agreement grants small customers (those purchasing under 10,200 dth per day per integrated system) exemption from daily, but not annual, curtailment. Small customers would also be exempt from curtailment in Priority 1. A Priority 1 exemption would also be given by Texas Eastern on a "best efforts" basis to GS and DCQ customers who are without underground storage facilities of their own and who have utilized all other available supplies on a best efforts basis.

The settlement agreement proposes to continue the use of the Annual Quantity Entitlements (AQE's) presently in effect which are based primarily on each customer's historic uses. With a one-year period for adjustment, the agreement provides that, effective April 16, 1977, curtailments will be administered in accordance with a revised data base reflecting the allocation of summer storage injections to the priorities of service for each summer month (April 16-November 15) based on winter season (November 16-April 15) sales. A further provision of the agreement proposes the continuation of Texas Eastern's handling of demand charge adjustments (DCA's) and the method it is presently using to administer DCA's. Texas Eastern would continue to receive its full demand charges, while at the same time allowing for a redistribution of demand and commodity charges among its customers; customers curtailed more than the system average are relieved of a portion of their demand charges, while those curtailed less than the system average pay in effect a higher demand charge for volumes they take by way of paying increased commodity charges.

On the subject of customer overruns of AQE's, the settlement provides a two percent overrun without imposition of a penalty charge, but subtraction of those excess quantities from the customer's AQE for the next year. For overruns in excess of two percent, a $5.00 per dth penalty charge would be assessed. Small customers would be required by November 1 of the next contract year to arrange for payment of the penalty charges or be further penalized by subtraction from the AQE of two times the quantity in excess of the two percent overrun and revocation of the customer's peak day exemption pending payment.

An opportunity for initial comments on the proposed settlement has been provided and such comments were due to be filed by December 3, 1975. Any person, including the parties to this proceeding, may file reply comments to the initial comments on or before February 6, 1976. Copies of the initial comments and the proposed settlement agreement are on file and available for public inspection in the Commission's Office of Public Information.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2300 Filed 1-26-76;8:45 am]

[Docket Nos. AR61-2 and AR69-1, etc.]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Filing of Proposed Plan for Flow-Through of Refunds From Producers

JANUARY 16, 1976.

Take notice that on December 17, 1975, Transcontinental Gas Pipe Line Corporation (Transco) filed with the Commission a proposed plan for the flow-through of refunds received from producers pursuant to Opinion No. 598 in the captioned dockets. Transco states that such refunds total $235,968.40, including interest, and are applicable to gas purchases during the period January 1, 1961, to January 1, 1971.

Transco states that it proposes to flow-through the subject refunds, including interest, by crediting the balance in its Unrecovered Purchased Gas Cost Account in the amount of $235,968.40.

Any person desiring to be heard or to protest said filing should file a petition

to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 30, 1976. 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.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2278 Filed 1-26-76;8:45 am]

[Docket No. CP72-182]

TRANSCONTINENTAL GAS PIPE LINE CORP. AND TEXAS GAS TRANSMISSION CORP.

Petition To Amend

JANUARY 20, 1976.

Take notice that on January 6, 1976, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, and Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owenboro, Kentucky 42301, jointly Petitioners, filed in Docket No. CP72-182 a petition to amend the order of the Commission of June 27, 1972 (47 FPC 1621), as amended, issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act to include authorization to exchange natural gas at five additional points, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioners state that by a letter agreement dated December 26, 1975, they have amended further their exchange agreement to add five points of delivery of gas for exchange: (1) At the interconnection of Consolidated Natural Gas' 16-inch pipeline and Transco's 8-inch and 12-inch pipelines in Acadia Parish, Louisiana; (2) at the outlet of the Eagan Gasoline Plant in Acadia Parish, Louisiana; (3) at the outlet of the Texaco-Henry Plant in Vermilion Parish, Louisiana; (4) at a proposed exchange point which would be constructed by Texas Gas at the intersection of Texas Gas' 10-inch Lewisburg pipeline and Transco's 20-inch and 2-24-inch pipeline system in Acadia Parish, Louisiana; and (5) at an existing point of interconnection between the systems of Transco and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), near Crowley, Acadia Parish, Louisiana.

The amendment is stated to provide for an initial charge of 0.5 cent per Mcf of gas delivered at the Transco-Tennessee interconnection, which charge is stated to be based on the rate of 2.0 cents per 100 miles of haul.

Texas Gas would be required to install an 8-inch meter station and related equipment between Texas Gas' 10-inch Lewisburg pipeline and Transco's pipeline in Acadia Parish. The estimated cost of such facilities is approximately $68,500, which costs would be financed with cash on hand. The petition states that Transco would not be required to construct any additional facilities.

Petitioners state that the proposed additional delivery points would allow greater flexibility in delivery of gas from one party to the other where such deliveries would be beneficial to fulfill Petitioners' obligations.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 9, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2320 Filed 1-26-76;8:45 am]

[Docket No. RP75-30]

UNITED GAS PIPELINE CO.

Change in Date of Informal Conference

January 19, 1976.

By notice issued in this docket on January 5, 1976, all parties were informed of the convening of an informal conference to be held on February 10, 1976 for the purpose of permitting the parties and the Staff to consider the means by which the hearing in this docket may be facilitated and to discuss any other procedural matter.

The date of the informal conference is changed to February 11, 1976 and will be convened at 10:00 a.m. on that day in the offices of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

MARY KIDD PEAK,
Acting Secretary.

[FR Doc.76-2301 Filed 1-26-76;8:45 am]

GENERAL SERVICES ADMINISTRATION

Federal Preparedness Agency

RADIOLOGICAL INCIDENT EMERGENCY RESPONSE PLANNING; FIXED FACILITIES AND TRANSPORTATION

Interagency Responsibilities

Correction

In FR Doc. 75-34638 appearing at page 59494 in the issue of Wednesday, December 24, 1975, on page 59495, first column, item 5 should be corrected to read as follows:

"5. Facilitating State and local contacts for NRC, ERDA, and DOT."

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE ON ENERGY FACILITY SITING

Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee on Energy Facility Siting.
Date: February 12 and 13, 1976.
Time: 9 a.m. each day.
Place: Main Conference Center, MITRE Corporation, Westgate Research Park, McLean, Virginia.
Type of Meeting: Open.
Contact Person: Mr. Richard A. Waller, Energy Policy Analyst, Office of Energy R&D Policy, Rm. 537, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-7804. Anyone who plans to attend should notify Mr. Waller by February 9.
Summary Minutes: May be obtained from the Committee Management Coordination Staff, National Science Foundation, Management Analysis Office, Rm. 248, Washington, D.C. 20550.
Purpose of Advisory Committee: To provide advice and recommendations concerning the plans, status, and results of NSF sponsored studies relating to siting of energy facilities.
Agenda: Will include:

FEBRUARY 12

9:00—Presentation of NRC Energy Center Study Results
11:30—Discussion and Questions
12:30—Recess
2:00—Review of Other Energy Center Studies and Planning Efforts
2:30—Discussion
3:00—Experience of Pennsylvania with Power Park Planning
4:00—Discussion
5:00—Adjourn

FEBRUARY 13

9:00—Discussion and Development of Committee Recommendations
12:00—Recess
1:30—Approval of Recommendations
4:30—Adjourn

GAIL A. MCHENRY,
Acting Committee Management Officer.

JANUARY 22, 1976.

[FR Doc.76-2349 Filed 1-26-76;8:45 am]

ADVISORY PANEL FOR ENVIRONMENTAL BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Environmental Biology.
Date: February 12 and 13, 1976.
Time: 9 a.m. each day.

Place: Rm. 643, National Science Foundation, 1800 G St., NW., Washington, D.C.
Type of Meeting: Closed.
Contact Person: Dr. Paul Risser, Program Director for Environmental Biology, Rm. 336, National Science Foundation, Washington, D.C. 20550, telephone 202-632-7324.
Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in environmental biology.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for Closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within the exemptions of 5 U.S.C. 552(b), (4), (5), and (6).
Authority to Close Meeting: The determination made on February 21, 1975, by the Director of the National Science Foundation pursuant to provisions of section 10 (d) of Pub. Law 92-463.

GAIL A. MCHENRY,
Acting Committee Management Officer.

JANUARY 22, 1976.

[FR Doc.76-2348 Filed 1-26-76;8:45 am]

UNDERGRADUATE INSTRUCTIONAL SCIENTIFIC EQUIPMENT (ISEP) SUBPANEL

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Undergraduate Instructional Scientific Equipment (ISEP) Subpanel, Advisory Panel for Science Education Projects.
Date: February 12, 13, and 14, 1976.
Time: 9 a.m. each day.
Place: Sir Francis Drake Hotel, San Francisco, California.
Type of Meeting: Closed.
Contact Person: Dr. Thomas S. Quarles, Program Manager, Undergraduate Instructional Scientific Equipment Program, Rm. W-454, National Science Foundation, Washington, D.C. 20550, telephone (202) 282-7587.
Purpose of Subpanel: To provide advice and recommendations concerning the merit of specific education proposals submitted to the ISEP Program for consideration.
Agenda: Review and evaluate specific education proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information and personal information concerning individuals associated with the proposals. These matters are within the exemptions of 5 U.S.C. 552(b), (4), (5), and (6).
Authority To Close Meeting: The determination made on February 21, 1975, by the Director of the National Science Foundation pursuant to provisions of section 10(d) of Pub. Law 92-463.

GAIL A. MCHENRY,
Acting Committee Management Officer.

JANUARY 22, 1976.

[FR Doc.76-2350 Filed 1-26-76;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Docket No. PRM 73-1]

BAVCOCK & WILCOX

Filing of Petition for Rulemaking

Correction

In FR Doc. 76-1497, appearing at page 2871 for the issue of Tuesday, January 20, 1976, make the following changes on page 2871.

1. The headings should read as set forth above.

2. The last two lines of the second paragraph should read as follows: "(grams contained U-235) ÷2.5 (grams U-233+grams plutonium)" with the."

[Docket No. 50-261]

CAROLINA POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Facility Operating License No. DPR-23 issued to Carolina Power & Light Company which revised Technical Specifications for operation of the H. B. Robinson Steam Electric Plant Unit No. 2, located in Darlington County, Hartsville, South Carolina. The amendment becomes effective 30 days after the date of issuance.

This amendment revises the Administrative Control Section of the Technical Specifications for Robinson-2. It also relocates environmental reporting requirements to a new Appendix B. This relocation is an interim action pending the issuance of comprehensive Appendix B Environmental Technical Specifications.

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 Ch. I, which are set forth in the license amendment. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 6, 1975, (2) Amendment No. 17 to License No. DPR-23, 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 Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 19th day of January 1976.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Reactor Licensing.

[FR Doc.76-2245 Filed 1-26-76;8:45 am]

[Docket No. 27-47]

CHEM-NUCLEAR SYSTEMS, INC.

Issuance of Amendment of Byproduct, Source, and Special Nuclear Material License

No request for a hearing or petition for leave to intervene having been filed following publication of the Notice of Proposed Amendment of Byproduct, Source and Special Nuclear Material License, the Nuclear Regulatory Commission has this date issued Amendment No. 09 to License No. 46-13536-01 which authorizes Chem-Nuclear Systems, Inc., to possess up to 1,000 grams of uranium 235 and to bury the uranium 235 at its burial ground located near Barnwell, South Carolina.

Dated at Bethesda, Md., January 21, 1976.

For the Nuclear Regulatory Commission.

BERNARD SINGER,
Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc.76-2251 Filed 1-26-76;8:45 am]

[Docket Nos. 50-237, 50-249]

COMMONWEALTH EDISON CO.

Issuance of Amendments to Facility Operating Licenses

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 13 and 11 to Facility Operating Li-

cense Nos. DPR-19 and DPR-25, respectively, to the Commonwealth Edison Company (the licensee), which revised Technical Specifications for operation of the Dresden Nuclear Power Station Units 2 and 3 (the facilities), located in Grundy County, Illinois. The amendments are effective as of their date of issuance.

These amendments revise the Technical Specifications to (1) add requirements that would limit the period of time operation can be continued with immovable control rods that could have control rod drive mechanism collet housing failures and (2) require increased control rod surveillance when the possibility of a control rod drive mechanism collet housing failure exists.

The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendments. Notice of the Proposed Issuance of Amendments to Facility Operating Licenses in connection with this action was published in the FEDERAL REGISTER on November 17, 1975 (40 FR 53322). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the Commission's letters to Commonwealth Edison Company dated September 4, 1975, and November 7, 1975, (2) Amendment No. 13 to License No. DPR-19, (3) Amendment No. 11 to License No. DPR-25, and (4) the Commission's related Safety Evaluation issued on September 4, 1975. 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 Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

A single copy of items (1) through (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 15th day of January, 1976.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Reactor Licensing.

[FR Doc.76-2250 Filed 1-26-76;8:45 am]

[Docket Nos. 50-295, 50-304]

COMMONWEALTH EDISON CO. ZION STATION, UNITS 1 AND 2

Issuance of Amendments to Facility Operating Licenses

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility Operating License No. DPR-39 and Amendment No. 13 to Facility Operating License No. DPR-48 issued to Commonwealth Edison Company which revised Technical Specifications for operation of Zion Station, Units 1 and 2, located in Lake County, Illinois. These amendments are effective as of their date of issuance.

The amendments deleted the provisions in the Technical Specification for annual thermoluminescent dosimeter measurements and ion chamber measurements.

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 rule and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendments. Prior public notice of these amendments is not required since the amendments do not involve a significant hazards considerations.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendment dated November 10, 1975, and (2) Amendment No. 16 to Facility License No. DPR-39 and (3) Amendment No. 13 to Facility Operating License No. DPR-49. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Waukegan Public Library, 128 North County Street, Waukegan, Illinois.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 21st day of January 1976.

For the Nuclear Regulatory Commission.

ROBERT A. PURPLE,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc.76-2249 Filed 1-26-76;8:45 am]

[Docket No. 50-409]

DAIRYLAND POWER COOPERATIVE (LACROSSE BOILING WATER REACTOR)

Order for Special Prehearing Conference

The Atomic Safety and Licensing Board will hold a Special Prehearing Conference on January 27, 1976, at 9:30 a.m. in the U.S. District Courtroom, 2nd Floor, Federal Building and U.S. Courthouse, 510 South Barstow Commons, Eau Claire, Wisconsin. Representatives of the parties will attend and members of the public may do so.

The Special Prehearing Conference is to be held in connection with the application of Dairyland Power Cooperative to modify the irradiated fuel storage pool by adding storage racks for irradiated fuel and shrouds and will consider matters set forth in 10 CFR 2.751a including the petition to intervene and the scheduling of further actions by the parties and the Board.

Dated at Bethesda, Md., this 20th day of January 1976.

It is so ordered.

ATOMIC SAFETY AND LICENSING BOARD,
FREDERIC J. COUFAL,
Chairman.

[FR Doc.76-2247 Filed 1-26-76;8:45 am]

[Docket No. 50-555]

GENERAL ATOMIC CO.

Application for and Consideration of Issuance of Facility Export License

Please take notice that General Atomic Company, San Diego, California has submitted to the Nuclear Regulatory Commission an application for a license to authorize the export of a research reactor with a thermal power level of 2000 Kw thermal to Thailand and that the issuance of such license is under consideration by the Nuclear Regulatory Commission.

No license authorizing the proposed reactor export will be issued until the Nuclear Regulatory Commission determines that such export is within the scope of and consistent with the terms of an applicable agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Nuclear Regulatory Commission has found that:

(a) The application complies with the requirements of the Act, and the Commission's regulations set forth in 10 CFR Ch. I, and

(b) The reactor proposed to be exported is a utilization facility as defined in said Act and regulations.

In its review of applications solely to authorize the export of production or utilization facilities, the Nuclear Regulatory Commission does not evaluate the health and safety characteristics of the facility to be exported.

On or before February 12, 1976, a request for a hearing is filed with the Nuclear Regulatory Commission by the applicant, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of the Office of Nuclear Material Safety and Safeguards may, upon the determinations and findings noted above, cause to be issued to General Atomic Company a facility export license and may cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Nuclear Regulatory Commission will

issue a notice of hearing or an appropriate order.

A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 19th day of January 1976.

For the Nuclear Regulatory Commission.

G. WAYNE KERR,
Chief, Agreements and Exports Branch, Division of Fuel Cycle and Material Safety.

[FR Doc.76-2243 Filed 1-26-76;8:45 am]

[Docket Nos. 50-424, 50-425 (CP Amdt.)]

GEORGIA POWER CO. (ALVIN W. VOGTLE NUCLEAR PLANT, UNITS 1 AND 2)

Postponement of Hearing

By telephone conference call after C.O.B. on Monday, January 20, 1976, the Board Chairman and counsel for all parties were notified by the NRC Staff that due to unexpected, last-minute developments the Staff testimony (which was due to be exchanged with the other parties today) cannot be ready for distribution in time for the public evidentiary hearing scheduled to start on January 27, 1976. Accordingly, the Staff requested an indefinite postponement, with the proffer of a status report in one week. At that time, it is anticipated that a firm, new date will be proposed.

The Staff's request for a postponement is granted. The Board directs that the Staff submit a status report to the Board and all parties no later than one (1) week from today. The Board and counsel for all parties will confer by telephone conference call as soon as a new hearing date can be proposed. The Board will then issue another Notice of Hearing disseminating the new date for the start of the evidentiary hearing.

Issued at Bethesda, Md., this 20th day of January 1976.

It is so ordered.

ATOMIC SAFETY AND LICENSING BOARD,
THOMAS W. REILLY,
Chairman.

[FR Doc.76-2240 Filed 1-26-76;8:45 am]

[Docket No. 50-316]

INDIANA & MICHIGAN POWER CO. AND INDIANA & MICHIGAN ELECTRIC CO. (DONALD C. COOK NUCLEAR PLANT, UNIT 2)

Order Extending Construction Completion Date

Indiana & Michigan Power Company and Indiana & Michigan Electric Company are the holders of Provisional Construction Permit No. CPPR-61 issued by the Atomic Energy Commission (now the Nuclear Regulatory Commission) on March 25, 1969, for construction of the Donald C. Cook Nuclear Plant, Unit 2, presently under construction at the Companies' site in Berrien County, Michigan.

On September 23, 1974, and October 9, 1975, the Companies filed requests for an extension of the completion date. Completion of construction has been delayed due to (1) the need to redesign and rebuild the ice condenser, and (2) lack of funds.

This action involves no significant hazards consideration: good cause has been shown for the delay; and the requested extension is for a reasonable period. The bases for these conclusions are set forth in a staff evaluation dated January 20, 1976:

It is hereby ordered, That the earliest and latest completion dates for CPPR-61 be revised to September 1, 1977, and November 1, 1978, respectively.

Date of issuance: January 20, 1976.

For the Nuclear Regulatory Commission.

RICHARD C. DEYOUNG,
Assistant Director for Light Water Reactors, Division of Project Management.

[FR Doc.76-2246 Filed 1-26-76;8:45 am]

[Docket No. STN 50-482]

KANSAS GAS AND ELECTRIC CO. AND KANSAS CITY POWER & LIGHT CO. (WOLF CREEK GENERATING STATION, UNIT NO. 1)

Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787 (a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this proceeding:

Alan S. Rosenthal, Chairman, Dr. John H. Buck, Michael C. Farrar.

Dated: January 19, 1976.

ROMAYNE M. SKRUTSKI,
Secretary to the Appeal Board.

[FR Doc.76-2248 Filed 1-26-76;8:45 am]

[Docket No. 50-333]

POWER AUTHORITY OF THE STATE OF NEW YORK AND NIAGARA MOHAWK POWER CORP.

Proposed Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-59 issued to Power Authority of the State of New York and Niagara Mohawk Power Corporation (the licensee) for operation of the James A. FitzPatrick Nuclear Power Plant (the facility) located in Oswego County, New York.

The amendment would revise the Technical Specifications to add requirements that would limit the period of time operation can be continued with immovable control rods that could have control rod mechanism collet housing failures.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By February 26, 1976, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and to Arvin E. Upton, Esquire, LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street, NW., Washington, D.C., the attorney for the licensee.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the Commission's letter to the Power Authority of the State of New York dated September 19, 1975 and the attached proposed Technical Specifications and the Safety Evaluation by the Commission's staff dated September 19, 1975, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Oswego City Library, 120

E. Second Street, Oswego, New York. The license amendment and Safety Evaluation may be inspected at the above locations and a copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 19th day of January, 1976.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Reactor Licensing.

[FR Doc.76-2242 Filed 1-26-76;8:45 am]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.35, Revision 2, "Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containment Structures," describes a basis acceptable to the NRC staff for developing an appropriate inservice inspection and surveillance program for ungrouted tendons in prestressed concrete containment structures of light-water-cooled reactors. This revision reflects comments received from the public and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Md., this 19th day of January 1976.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc.76-2241 Filed 1-26-76;8:45 am]

[Dockets Nos. 50-266, 50-301]

WISCONSIN ELECTRIC POWER CO. AND WISCONSIN MICHIGAN POWER CO.

Issuance of Amendment to Facility Operating Licenses

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 5 and 9 to Facility Operating Licenses Nos. DPR-24 and DPR-27 issued to Wisconsin Electric Power Company and Wisconsin Michigan Power Company, which revised Technical Specifications for operation of the Point Beach Nuclear Plant Units Nos. 1 and 2, located in the town of Two Creeks, Manitowoc County, Wisconsin.

The amendment modifies the reactor coolant system pressure temperature limits to account for neutron irradiation induced increases in reactor vessel metal nil ductility temperature (RT_{NDT}).

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 Ch. I, which are set forth in the license amendment. Prior public notice of this amendment is 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 July 11, 1975, (2) Amendments Nos. 5 and 9 to Licenses Nos. DPR-24 and DPR-27, with Changes Nos. 10 and 15 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 Manitowoc Public Library, 808 Hamilton Street, Manitowoc, Wisconsin.

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 Reactor Licensing.

Dated at Bethesda, Md., this 15th day of January 1976.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Reactor Licensing.

[FR Doc.76-2244 Filed 1-26-76;8:45 am]

[Docket No. 50-29]

YANKEE ATOMIC ELECTRIC CO.

Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 22 to Facility Operating License No. DPR-3 issued to Yankee Atomic Electric Company which revised Technical Specifications for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts. The amendment is effective as of its date of issuance.

This amendment changes the restrictions in the Technical Specifications relating to the allowable fraction of full power.

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 Ch. I, which are set forth in the license amendment. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) a environmental statement, negative declaration, or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 29, 1975, (2) Amendment No. 22 to Facility Operating License No. DPR-3, 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 Greenfield Public Library, 402 Main Street, Greenfield, Massachusetts 01581.

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 Operating Reactors.

Dated at Bethesda, Md., this 20th day of January 1976.

For the Nuclear Regulatory Commission.

ROBERT A. PURPLE,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc.76-2252 Filed 1-26-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

EQUITY FUNDING CORPORATION OF AMERICA

Suspension of Trading

JANUARY 21, 1976.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, warrants to purchase the stock, 9½ percent debentures due 1990, 5½ percent convertible subordinated debentures due 1991, and all other securities of Equity Funding Corporation of America being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from January 22, 1976 through January 31, 1976.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.76-2329 Filed 1-26-76;8:45 am]

[70-5785]

GEORGIA POWER CO.

Proposal To Lease Hopper Cars

Notice is hereby given that Georgia Power Company ("Georgia"), 270 Peachtree Street, NW., Atlanta, Georgia 30303, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application, and an amendment thereto, with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 9(a) and 10 of the Act as applicable thereto. All interested persons are referred to the amended application, which is summarized below, for a complete statement of the proposed transaction.

Georgia proposes to enter into a lease arrangement ("Lease") with General American Transportation ("Lessor") with respect to 255 Ortner Rapid Discharge Open-Top Hopper Cars ("cars"). The cars are currently on order from the Ortner Freight Company ("Ortner") at a quoted price of $32,025.69 per car. Delivery of the cars to Georgia is scheduled to commence on March 22, 1976 at a rate of at least 15 cars per week. Under the terms of an arrangement with the Lessor, which is intended to secure to Georgia the benefit of the investment tax credit, Georgia is the conditional purchaser of the cars. However, upon the Lease becoming effective, Lessor will purchase the cars pursuant to a separate contract entered into with Ortner.

The Lease provides, among other things that Georgia will make rental payments over a period of 15 years at a monthly rate of $374.12 per car, or approximately $95,400 per month, subject to adjustment, however, if the purchase price varies from the qouted price or if Georgia fails to receive the investment tax credit; that Lessor will maintain the cars or cause them to be maintained at the rate of cost plus 15 percent if maintenance work is performed by Lessor and cost plus 5 percent if such work is performed elsewhere; and that Georgia will reimburse Lessor for any alterations or special work to be performed on the cars at Georgia's request or as a result of damage due to Georgia's negligence. Georgia will not be obligated to pay rent on any car after the fifth day any such car is out of service during normal maintenance.

The Lease also provides for replacement cars in case any car is damaged beyond repair. All taxes and fees imposed with respect to the cars, other than Lessor's income taxes and similar taxes, will be paid by Georgia.

Georgia states that neither Ortner nor Lessor is affiliated with Georgia and that the terms of the Lease, negotiated at arm's-length, are competitive with the terms which would otherwise be available in the market. Georgia currently leases 670 other coal cars under a similar lease with Lessor. Georgia believes that the terms of the Lease are fair and reasonable and that it is in the best interests of Georgia's investors and consumers. Georgia further states that Lessor is a large company with considerable experience and expertise in leasing and maintaining coal cars, and that Lessor's particular combination of qualifications is a unique and necessary feature in Lessor's obligations to maintain Georgia's coal cars.

A statement of the fees and expenses incurred or paid in connection with the proposed transaction will be supplied by amendment. It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than February 13, 1976, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served as located more than 500 miles from the point of mailing) upon the applicant of the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application as amended or as it may be further amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders in this matter, including the date of the hearing (if ordered) and any postponement thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.76-2327 Filed 1-26-76;8:45 am]

[812-3885]

INVESTORS SYNDICATE OF AMERICA, INC.

Filing of Application for an Order Approving an Amendment to a Depository Agreement Covering Face-Amount Certificates Issued by Applicant

Notice is hereby given that Investors Syndicate of America, Inc. ("Applicant"), IDS Tower, Minneapolis, Minnesota 55402, a face-amount certificate company registered under the Investment Company Act of 1940 ("Act"), has filed an application for an order pursuant to section 28(c) of the Act approving the Supplemental Agreement dated October 16, 1975 ("Supplemental Agreement") to the Depository Agreement dated November 14, 1940, between Applicant and The Marquette National Bank of Minneapolis ("Bank").

Section 28(c) of the Act provides, to the extent here relevant, that the Commission shall, by order, in the public interest or for the protection of investors, require a registered face-amount certificate company to deposit or maintain, with a bank having specified qualifications, all or any part of its investments required as certificate reserves under the provisions of section 28(b) of the Act.

On November 16, 1940, the Commission issued an order (Investment Company Act Release No. 18) approving the Depository Agreement requiring Applicant to deposit and maintain, in accordance with the terms and conditions set forth in the Depository Agreement with the Bank or with some other trustee or trustees having the qualifications re-

quired by paragraph 1 of section 26(c) of the Act, qualified assets at least equal to the certificate reserve requirements of section 28 of the Act for certain outstanding certificates.

Subsequently, the Commission has issued orders, contained in Investment Company Act Release Nos. 792, 1895, 3105, 3552, 3751, 4390, 6810, 8551 and 8821, granting applications for amendments to the Depository Agreement to include coverage of new series of securities proposed to be issued by Applicant.

Previously, Applicant has applied for, and has received, a separate order from the Commission for each new series of face-amount certificates it has issued, notwithstanding the fact that the various supplemental agreements did not make any changes of substance in the original Agreement. Applicant believes that no useful purpose is served by continuing to apply for a new order where the only change in the Depository Agreement, which has received favorable Commission action on ten occasions since 1940, is to add a new certificate series designation. The Supplemental Agreement for which approval is requested by Applicant will apply to a new series of face-amount certificates to be designated Series 176 as well as all other face-amount certificates issued by Registrant, both in the past and in the future.

Applicant asserts that the Depository Agreement as amended by the subject Supplemental Agreement continues to be appropriate for the protection of investors, as it has since 1940. In support of this assertion Applicant states that the Supplemental Agreement will be subject to all of the terms and conditions contained in the foregoing orders of the Commission relating to the Depository Agreement and Subsequent Amendments thereto.

Accordingly, Applicant agrees to file with the Commission on or before the twentieth days of January, April, July and October of each year a statement showing the values of assets on deposit to meet certificate liability requirements and the amount of such certificate liability requirements. The values and amount are to be determined as of the last day of the preceding month. Market or fair values are to be shown as well as values determined in accordance with the provisions of the Code of the District of Columbia and the rules, regulations and orders prescribed by the Commission. Applicant further agrees that each new series will be subject to the registration and prospectus requirements of the Securities Act of 1933.

Notice is further given that any interested person may, not later than February 20, 1976, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washingtno, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of each service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0.5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.76-2328 Filed 1-26-76;8:45 am]

[File No. 500-1]

TI CORP. (OF CALIFORNIA)

Suspension of Trading; Amendment

JANUARY 20, 1976.

The Commission having determined to amend its notice of January 14, 1976 summarily suspending in the securities of TI Corporation (of California) for the period from 8:30 p.m., e.s.t. on January 14, 1976 through midnight e.s.t. on January 23, 1976;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the common stock and all other securities of TI Corporation (of California) being traded on the New York Stock Exchange, PBW Stock Exchange, Pacific Stock Exchange and Boston Stock Exchange and all other securities of TI Corporation (of California) being traded otherwise than on a national securities exchange is suspended, for the period from 8:30 p.m., e.s.t. on January 14, 1976 through 10:00 a.m., e.s.t. on January 21, 1976.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.76-2256 Filed 1-26-76;8:45 am]

[File No. 500-1]

WESTERN ORBIS CO.

Suspension of Trading

JANUARY 20, 1976.

The common stock of Western Orbis Company being traded on the American Stock Exchange and Pacific Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Western Orbis Company being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchanges and otherwise than on a national securities exchange is suspended, for the period from 2:20 p.m., e.s.t. on January 20, 1976 through midnight e.s.t. on January 29, 1976.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.76-2257 Filed 1-26-76;8:45 am]

SMALL BUSINESS ADMINISTRATION

SMALL BUSINESS INVESTMENT COMPANY NATIONAL ADVISORY COUNCIL

Public Meeting

The Small Business Investment Company National Advisory Council will hold a public meeting at 9:00 a.m., Friday, February 20, 1976, at The Royal Orleans Hotel, 621 St. Louis Street, New Orleans, Louisiana 70140, to discuss such business as may be presented by members, the staff of the Small Business Administration, and others attending.

For further information, write or call John T. Wettach, Associate Administrator for Finance and Investment, 1441 L Street, NW., Room 800, Washington, D.C. 20415, (8) 382-5395.

Dated: January 20, 1976.

MARY LOU GRIER, *Deputy Advocate for Advisory Councils, Small Business Administration.*

[FR Doc.76-2334 Filed 1-26-76;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-278]

ANDREW PALLACK & CO., AND BRUCE RAMSEY DIVISION OF ANDREW PALLACK & CO., INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-278; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 4, 1975 in response to a worker petition received on November 4, 1975 which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's suits, sport coats and trousers at the Bruce Ramsey Division of Andrew Pallack & Co., Inc., New York, New York. The investigation was expanded to include Andrew Pallack & Co., Inc., itself.

The notice of investigation was published in the FEDERAL REGISTER on November 19, 1975 (40 FR 53640). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Andrew Pallack and its Bruce Ramsey Division, their customers, the Clothing Manufacturers Association of the U.S.A., the Department of Commerce, the International Trade Commission, and Department Files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated or are threatened to become totally or partially separated,

(2) That sales, production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average number of production workers at Andrew Pallack declined 16 percent in 1974 compared to 1973 and declined 31 percent in the first nine months of 1975 compared to the first nine months of 1974. The average number of production workers at Bruce Ramsey declined 35 percent in the first nine months of 1975 compared to the first nine months of 1974.

Sales or production, or both, have decreased absolutely. Sales at Andrew Pallack declined 23 percent in 1974 compared to 1973. Sales declined 22 percent in the first nine months of 1975 compared to the first nine months of 1974.

Production at Bruce Ramsey declined 32 percent in the first nine months of 1975 compared to the first nine months of 1974.

Increased imports contributed importantly. Imports of boys' and men's suits increased from 1.4 million units in 1970 to 1.9 million units in 1974. The ratios of imports to domestic consumption and production increased from 8.6 percent and 9.4 percent, respectively in 1972 to 9.0 percent and 9.9 percent respectively in 1974. The imports to production ratio rose from 7.7 percent in the first seven months of 1974 to 22.1 percent in the first seven months of 1975.

Imports of men's and boys' sport coats increased from 4.2 million units in 1972 to 4.8 million units in 1974. The ratios of imports to consumption and production increased from 14.6 percent and 17.1 percent, respectively in 1972 to 18.2 percent and 22.3 percent, respectively in 1974. The imports to production ratio increased from 24.5 percent in the first seven months of 1974 to 36.7 percent in the first seven months of 1975.

The evidence developed during the Department's investigation indicates that the men's domestic clothing industry has been adversely affected by increased imports from low wage areas. Bruce Ramsey stitches pants exclusively for Andrew Pallack. 95 percent of its production is of suit pants which are sold as part of finished suits by Andrew Pallack. Customers of Andrew Pallack handle more expensive, high fashion men's clothing which their clients demand. These customers have decreased purchases from Pallack in favor of less expensive imported clothing offering the same styling appeal.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits and sport coats produced by Andrew Pallack and its Bruce Ramsey Division contributed importantly to the total or partial separation of the workers of the firms. In accordance with the provisions of the Act, I make the following certification:

All hourly, piecework, and salaried workers at Andrew Pallack & Co., Inc. who became totally or partially separated from employment on or after November 2, 1974 and all hourly, piecework, and salaried workers at the Bruce Ramsey Division of Andrew Pallack who became totally or partially separated from employment on or after December 21, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of January 1976.

JAMES F. TAYLOR,
Director,
Planning and Evaluation Staff.

[FR Doc.76-2370 Filed 1-26-76;8:45 am]

[TA-W-277]

ARROW CLOTHES, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-277: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 4, 1975 in response to a worker petition received on November 4, 1975 which was filed by Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's suit coats, sportcoats and trousers at Arrow Clothes, Inc., New York, New York.

The notice of investigation was published in the FEDERAL REGISTER on November 19, 1975 (40 FR 53640). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Arrow Clothes, Inc., its customers, the Clothing Manufacturers Association of the U.S.A., the Department of Commerce, the International Trade Commission, and Department Files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated or are threatened to become totally or partially separated,

(2) That sales, production, or both of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average number of production workers at Arrow Clothes declined 15 percent in 1974 compared to 1973. The average number of production workers declined 41 percent in the first nine months of 1975 compared to the first nine months of 1974.

Sales or production, or both, have decreased absolutely. Production at Arrow Clothes declined 6 percent in 1974 compared to 1973. Production declined 38 percent in the first nine months of 1975 compared to the first nine months of 1974.

Increased imports contributed importantly. Imports of boys' and men's suits increased from 1.4 million units in 1970

to 1.9 million units in 1974. The ratios of imports to domestic consumption and production increased from 8.6 percent and 9.4 percent, respectively in 1972 to 9.0 percent and 9.9 percent respectively in 1974. The imports to production ratio rose from 7.7 percent in the first seven months of 1974 to 22.1 percent in the first seven months of 1975.

Imports of men's and boys' sport coats increased from 4.2 million units in 1972 to 4.8 million units in 1974. The ratios of imports to consumption and production increased from 14.6 percent and 17.1 percent, respectively, in 1972 to 18.2 percent and 22.3 percent, respectively, in 1974. The imports to production ratio increased from 24.5 percent in the first seven months of 1974 to 36.7 percent in the first seven months of 1975.

The evidence developed during the Department's investigation indicates that the men's domestic clothing industry has been adversely affected by increased imports from low wage areas. Arrow clothes stitches suit coats and sportcoats exclusively for Andrew Pallack. Customers of Pallack handle more expensive, high fashion styled men's clothing which their clients demand. These customers have decreased purchases from Pallack in favor of less expensive imported clothing offering the same styling appeal.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits and sport coats produced by Arrow Clothes contributed importantly to the total or partial separation of the workers of that firm.

In accordance with the provisions of the Act, I make the following certification:

All hourly, piecework, and salaried workers at Arrow Clothes, Inc. who became totally or partially separated from employment on or after December 28, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of January 1976.

JAMES F. TAYLOR,
Director,
Planning and Evaluation Staff.

[FR Doc.76-2369 Filed 1-26-76;8:45 am]

[TA-W-314]

BAXTER STORES, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-314: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 5, 1975 in response to a worker petition received on November 5, 1975 which was filed by the Amalgamated Clothing Workers of America (ACWA) on behalf of workers and former workers producing suits, sportcoats, and trousers at Baxter Stores, Inc., Trenton, New Jersey.

The notice of investigation was published in the FEDERAL REGISTER (40 FR 53641) on November 19, 1975. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Baxter Stores, its retail outlets, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average number of production workers decreased 21 percent in the first eleven months of 1975 compared to the like period in 1974. Average weekly hours increased 2 percent in the first eleven months of 1975 compared to the like period of 1974.

Sales or production, or both, have decreased absolutely. Total sales of Baxter Stores declined 23 percent from 1973 to 1974. Sales declined 30 percent during the first ten month of 1975 compared to the same period of 1974.

Increased imports contributed importantly. Imports of men's and boys' suits have increased relative to domestic consumption and production in each year from 1971 to 1973. While imports of men's and boys' suits fell slightly in 1974 compared to 1973, the ratios of imports to domestic production and consumption in 1974 of 9.9 and 9.0 percent respectively were well above the 1971–1973 average of 8.6 percent and 7.8 percent, respectively. In the first 7 months of 1975 imports of men's and boys' suits increased 131 percent compared to the first 7 months of 1974. The ratio of imports to domestic production increased from 7.7 percent in the first seven months of 1974 to 22.1 percent in the first seven months of 1975.

Imports of men's and boys' sportcoats increased their share of the domestic market each year from 1972 to 1974. The ratio of imports to domestic production and consumption increased from 17.1 percent and 14.6 percent respectively in 1972 to 22.3 percent and 18.2 percent respectively in 1974. The ratio of imports to domestic production increased from 24.5 percent in the first seven months of 1974 to 36.7 percent in the first seven months of 1975.

Imports of men's and boys' tailored trousers decreased their relative share of domestic production and consumption from 25.7 percent and 20.5 percent in 1972 to 19.7 and 16.4 percent in 1974. In the first seven months of 1975 imports of men's and boys' tailored trousers increased 29 percent compared to the first seven months of 1974.

Twenty-one out of thirty retail outlets were closed because of declining sales. The decline in sales was related to increasing competition from discount stores which were selling imported apparel.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with suits, sportcoats, and trousers produced at Baxter Stores, Inc., Trenton, New Jersey contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All hourly, piecework, and salaried workers engaged in employment related to the production of suits, sportcoats, and trousers at the Trenton plant of Baxter Stores, Inc. who became totally or partially separated from employment on or after June 20, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington D.C., this 12th day of January 1976.

JAMES F. TAYLOR,
Director,
Planning and Evaluation Staff.

[FR Doc.76-2371 Filed 1-26-76;8:45 am]

[TA-W-256]

CHRYSLER CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-256: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 30, 1975 in response to a worker petition received on October 17, 1975 which was filed on behalf of workers and former workers of the Design Office of Chrysler Corporation, Highland Park, Michigan.

The notice of investigation was published in the FEDERAL REGISTER (40 FR 50585) on October 30, 1975. No public hearing was requested and none was held.

The information upon which the determination was made was obtained

principally from officials of Chrysler Corporation and from Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations: The average number of workers employed in Chrysler's Design Office increased 15.7 percent from 1972 to 1973, declined 7.5 percent from 1973 to 1974 and fell 33.8 percent in the first nine months of 1975 compared to the like period in 1974.

Sales or production, or both, have decreased absolutely. Total Chrysler automotive sales in the United States and Canada increased 9.7 percent from 1972 to 1973, declined 19.5 percent from 1973 to 1974 and further declined by 21.2 percent in the first nine months of 1975 compared to the like period in 1974.

Increased imports contributed importantly. Average Design Office employment during 1973 and the first three quarters of 1974 was 31 percent higher than the 1970–1972 average largely because of the development during that period of a new small car for the 1977 model year. Because of marketing uncertainties and investment cost, Chrysler decided in late summer of 1974 to cancel work on that car with the result that a significant number of Design Office employees were laid off. Further reductions in Design Office employment ocurred in the fourth quarter of 1974 and the first half of 1975 which are attributable to (1) radical cost-reduction measures required because of the significant decline in sales resulting from adverse economic conditions and the impact of the energy crisis and (2) the election by management to accept the risk inherent in a reduced number of themes for design reviews and approvals.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with automobiles produced by Chrysler Corporation did not contribute importantly to the total or partial separation of the workers of such firm or subdivision.

Signed at Washington, D.C., this 17th day of January 1976.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.76-2372 Filed 1-26-76;8:45 am]

[TA-W-300]

DELTON, LTD. AND GEORGE HELLER, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-300; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 4, 1975 in response to a worker petition received on November 4, 1975 which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's suits and sportcoats at Delton, Ltd. of New York, New York. The investigation was expanded to include workers and former workers producing men's suits, sportcoats and slacks at the George Heller, Inc. division of Delton, Ltd., also of New York, New York.

The notice of investigation was published in the FEDERAL REGISTER on November 19, 1975 (40 FR 53642). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Delton, Ltd. and its George Heller division, their customers, the Clothing Manufacturers Association of the U.S.A., the Department of Commerce, the International Trade Commission, and Department Files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales, production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average number of production workers at Delton declined 54 percent in the first nine months of 1975 compared to the first nine months of 1974. The average number of production workers at George Heller declined 27 percent in the first nine months of 1975 compared to the first nine months of 1974.

Sales or production or both have decreased absolutely. Production at Delton Ltd declined 46 percent in the first nine months of 1975 compared to the first nine months of 1974. Production at George Heller declined 9 percent in the first nine months of 1975 compared to the first nine months of 1974.

Increased imports contributed importantly. Imports of boys' and men's suits increased from 1.4 million units in 1970 to 1.9 million units in 1974. The ratios of imports to domestic consumption and production increased from 8.6 percent and 9.4 percent, respectively in 1972 to 9.0 percent and 9.9 percent respectively in 1974. The imports to production ratio rose from 7.7 percent in the first seven months of 1974 to 22.1 percent in the first seven months of 1975.

Imports of men's and boys' sportcoats increased from 4.2 million units in 1972 to 4.8 million units in 1974. The ratios of imports to consumption and production increased from 14.6 percent and 17.1 percent, respectively in 1972 to 18.2 percent and 22.3 percent, respectively in 1974. The imports to production ratio increased from 24.5 percent in the first seven months of 1974 to 36.7 percent in the first seven months of 1975.

Imports of men's and boys' tailored trousers decreased their relative share of domestic production and consumption from 25.7 percent and 20.5 percent in 1972 to 19.7 percent and 16.4 percent in 1974. In the first seven months of 1975 imports of men's and boys' tailored trousers increased 29 percent compared to the first seven months of 1974.

In recent years the men's clothing industry has been subject to the adverse impact of competition by imports from low wage areas. Retail customers of Delton which carry men's clothing produced by Delton and its Heller division have increasingly switched to imported men's clothing. These customers report that consumers have become increasingly style conscious and prefer the imported European look. The imported clothing is of high quality and is less expensive than comparable domestic clothing. This has resulted in decreased production at Delton and Heller and separations of workers at both firms in 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits, sport coats and slacks produced by Delton, Ltd. and George Heller, Inc. contributed importantly to the total or par-

tial separation of the workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All hourly, piecework, and salaried workers at Delton Ltd., New York, N.Y. who became totally or partially separated on or after December 28, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All hourly, piecework, and salaried workers at George Heller, Inc., New York, N.Y. who became totally or partially separated from employment on or after March 8, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of January 1976.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.76-2373 Filed 1-26-76;8:45 am]

[TA-W-260]

FLORSHEIM SHOE CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-260: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 23, 1975 in response to a worker petition received on October 22, 1975 which was filed by the United Shoe Workers of America on behalf of workers formerly producing men's footwear at the North Adams, Massachusetts plant of Florsheim Shoe Company, Chicago, Illinois.

The notice of investigation was published in the FEDERAL REGISTER on October 31, 1975 (40 FR 50764). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Florsheim Shoe Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Footwear Industries Association, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The North Adams plant was only in operation from April 1974 to April 1975.

The average number of production workers declined 15.1 percent from the fourth quarter of 1974 to the first quarter of 1975. Average employment declined in each month of 1975 compared to the previous month. All employment was terminated in April 1975.

Average weekly hours declined 12.2 percent from the fourth quarter of 1974 to the first quarter of 1975.

Sales or production, or both, have decreased absolutely. Florsheim's group sales of men's footwear declined 12.3 percent in the first quarter of 1975 compared to the first quarter of 1974. Production at the North Adams plant declined 11.4 percent from the fourth quarter of 1974 to the first quarter of 1975. All production at the plant was terminated in April 1975.

Increased imports contributed importantly. Imports of articles like or directly competitive with men's footwear produced at the North Adams plant increased from 56.7 million pairs in 1972 to 65.4 million pairs in 1974. The ratios of imports to domestic consumption and production increased from 38.3 percent and 62.2 percent, respectively, in 1972 to 43.9 percent and 78.1 percent, respectively, in 1974.

Shoe manufacturing is a labor intensive industry. Imports from countries with low wage structures offer a price advantage over domestic footwear. Customers have reduced purchases of Florsheim footwear relative to purchases of imports. Reduced sales of the type of men's footwear produced at North Adams resulted in Florsheim's decision to terminate production at the North Adams plant.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's footwear produced at the North Adams plant contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provision of the Act, I make the following certification:

All hourly, piecework, and salaried workers engaged in employment related to the production of men's footwear at the North Adams, Massachusetts plant of Florsheim Shoe Company, Chicago, Illinois who become totally or partially separated from employment on or after October 17, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 15th day of January 1976.

GLORIA G. PRATT,
Director, Office of Foreign Economic Policy.

[FR Doc.76-2374 Filed 1-26-76;8:45 am]

[TA-W-268]

FULTON CLOTHES COMPANY, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-268: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 24, 1975 in response to a worker petition received on that date which was filed by the Amalagamated Clothing Workers of America on behalf of workers and former workers producing tailored clothing at Fulton Clothes Company, Inc., Philadelphia, Pennsylvania.

The notice of investigation was published in the FEDERAL REGISTER (40 FR 51520) on November 5, 1975. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Fulton Clothes Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number of proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articels produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average number of production workers at Fulton declined 18 percent in 1974 from 1973. Average weekly hours for production workers declined ten percent

in 1974 from 1973. All production workers were laid off during the shutdown of the Fulton plant between December 1974 and September 1975.

Sales or production, or both, have decreased absolutely. In 1973–1974 more than 95 percent of Fulton's production was of men's sportcoats which the firm produced on a contractual basis using its customers' materials and specifications. Production by Fulton declined 35 percent in value in 1974 from 1973. All production operations were terminated in December 1974 due to a lack of orders. Fulton reopened in September 1975 producing only ladies' jackets.

Increased imports contributed importantly. Imports of men's and boy's sportcoats increased their share of the domestic market in each year from 1972 to 1974. The ratios of imports to domestic production and consumption increased from 17.1 percent and 14.6 percent, respectively in 1972 to 22.3 percent and 18.2 percent, respectively in 1974.

The evidence developed in the Department's investigation reveals that one customer, who accounted for more than half of Fulton's output, terminated all purchases from Fulton in 1974 citing increasing import competition as a reason for its decision to leave the men's sportcoat market. With the loss of its major customer, Fulton shut down all production operations in December 1974. Fulton reopened in September 1975 producing only ladies' jackets and employment at Fulton has been increasing since that time.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's sportcoats produced by Fulton Clothes Company contributed importantly to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification.

All hourly, piecework, and salaried workers of Fulton Clothes Company, Inc. who became totally or partially separated from employment on or after October 14, 1974 and before December 29, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of January 1976.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.76-2375 Filed 1-26-76;8:45 am]

[TA-W-311]

HUDSON PANTS COMPANY, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-311: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 5, 1975 in response to a worker petition received on November 5, 1975 which was filed by the Amalgamated Clothing Workers of America (ACWA) on behalf of workers and former workers producing trousers at Hudson Pants Co., Inc., Jersey City, New Jersey.

The notice of investigation was published in the FEDERAL REGISTER (40 FR 53643 and 53644) on November 19, 1975. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Hudson Pants Co., customers of Hudson Pants Co., the U.S. Departmtent of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average number of production workers decreased 7 percent in 1974 compared with 1973, and declined 27 percent during the first eleven months of 1975 compared to the like period of 1974.

Sales or production, or both, have decreased absolutely. Production at Hudson Pants Co. remained stable in 1974 compared to 1973. During the first nine months of 1975, production declined 39 percent in terms of units from the first nine months of 1974.

Increased imports contributed importantly. Imports of men's and boys' tailored trousers decreased their relative share of domestic production and consumption from 25.7 percent and 20.5 percent respectively in 1972 to 19.7 percent and 16.4 percent respectively in 1974. In the first nine months of 1975 imports of men's and boys' tailored trousers increased 37 percent compared to the first nine months of 1974.

The evidence developed in the Department's investigation indicates that five of ten manufacturers contracting with Hudson Pants Co. went out of business, and imports were a factor causing the cessation of operations. Two other manufacturers reduced purchases from Hudson Pants Co. in 1975, and both cited imports by their customers as a factor.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with trousers produced at Hudson Pants Co., Inc., Jersey City, New Jersey contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All hourly, piecework, and salaried workers engaged in employment related to the production of trousers at Hudson Pants Co., Inc., Jersey City, New Jersey who became totally or partially separated from employment on or after November 29, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of January 1976.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.76-2376 Filed 1-26-76;8:45 am]

[TA-W-304]

M. KOPP, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-304: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 4, 1975 in response to a worker petition received on November 4, 1975 which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's and boys' suits, sportcoats, and overcoats at M. Kopp, Inc., New York, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on November 19, 1975 (40 FR 53645). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of M. Kopp, its customers, the Clothing Manufacturers Association of the U.S.A., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average hours worked by production employees at M. Koop declined 23 percent in 1974 compared to 1973 and declined 50 percent in the first nine months of 1975 compared to the first nine months of 1974.

Sales or production, or both, have decreased absolutely. Sales at M. Koop declined 46 percent in 1974 compared to 1973. Sales declined 44 percent in the first nine months of 1975 compared to the first nine months of 1974.

Increased imports contributed importantly. Imports of boys' and men's suits increased from 1.4 million units in 1970 to 1.9 million units in 1974. The ratios of imports to domestic consumption and production increased from 8.6 percent and 9.4 percent, respectively in 1972 to 9.0 percent and 9.9 percent, respectively in 1974. The imports to production ratio rose from 7.7 percent in the first seven months of 1974 to 22.1 percent in the first seven months of 1975.

Imports of men's and boys' sport coats increased from 4.2 million units in 1972 to 4.8 million units in 1974. The ratios of imports to consumption and production increased from 14.6 percent and 17.1 percent, respectively in 1972 to 18.2 percent and 22.3 percent, respectively in 1974. The imports to production ratio increased from 24.5 percent in the first seven months of 1974 to 36.7 percent in the first seven months of 1975.

Imports of men's leisure suits are not separately identified in the Tariff Schedules of the United States. They are included with the aggregate data on imports of men's and boys' suits. The data show that imports of men's suits increased both absolutely and relatively in the first seven months of 1975 compared to the first seven months of 1974.

The evidence developed during the Department's investigation indicates that the men's domestic clothing industry has been adversely affected by increased imports from low wage areas. Seventy-five percent of Kopp's production consists of men's and boys' leisure suits and sportcoats. Major customers of Kopp have decreased purchases of its men's clothing in favor of less expensive imported clothing.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits and sportcoats produced at M. Kopp, Inc., New York, New York contributed importantly to the total or partial separation of the workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All hourly, piecework, and salaried workers engaged in employment at M. Kopp, Inc., who became totally or partially separated from employment on or after October 20, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of January 1976.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.76-2377 Filed 1-26-76;8:45 am]

[TA-W-296]

LEFETON CUSTOM TAILORS NEW YORK, NEW YORK

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-296: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 4, 1975 in response to a worker petition received on November 4, 1975 which was filed by the Amalgamated Clothing Workers' Union on behalf of workers and former workers producing men's suit coats at Lefeton Custom Tailors, New York, New York.

The notice of investigation was published in the FEDERAL REGISTER on November 19, 1975 (40 FR 53644). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lefeton Custom Tailors; its customers; the Clothing Manufacturers Association of the United States; the U.S. International Trade Commission; the U.S. Department of Commerce and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average number of production workers declined 14 percent in 1974 compared to 1973 and 33 percent during the first nine months of 1975 compared to the like period in 1974.

Sales or production or both have decreased absolutely. Production at Lefeton declined 2 percent in 1974 compared to 1973 and 16 percent in the first 9 months of 1975 compared to the like period in 1974.

Increased imports contributed importantly. Imports of men's and boys' suits have increased relative to domestic consumption and production in each year from 1971 to 1973. While imports of men's and boys' suits fell slightly in 1974 compared to 1973 the ratios of imports to domestic production and consumption in 1974 of 9.9 and 9.0 percent respectively were well above the 1971-1973 average of 8.6 percent and 7.8 percent, respectively. In the first 7 months of 1975 imports of men's and boy's suits increased 131 percent compared to the first 7 months of 1974. The ratio of imports to domestic production increased from 7.7 percent in the first seven months of 1974 to 22.1 percent in the first seven months of 1975.

Imports of men's custom tailored apparel are not separately identified in the Tariff Schedules of the United States, they are included with the aggregate data of imports of men's tailored apparel.

This data shows that imports of men's suits increased both absolutely and relatively in the first seven months of 1975 compared with the first seven months of 1974.

The evidence developed by the Department's investigation indicates that in recent years the men's clothing industry has been subject to the adverse impact of competition from imported clothing from low wage areas.

One-half of Lefeton Custom Tailors' production is for one manufacturer. Because of intense price competition in the retail clothing industry, this manufacturer's customers decreased purchases of its clothing in favor of less expensive and more fashionable imported clothing. As a result, this manufacturer substantially reduced orders to Lefeton Custom Tailors.

Conclusion: After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's tailored suit coats produced at the New York City plant of Lefeton contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All hourly and salaried workers engaged in employment related to the production of men's tailored suit coats at the New York City plant of Lefeton Custom Tailors who became totally or partially separated from employment on or after December 14, 1974

are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of January 1976.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade Adjustment Policy.

[FR Doc.76-2378 Filed 1-26-76;8:45 am]

[TA-W-217]

MALCOLM KENNETH CO., DORCHESTER, MASSACHUSETTS

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-217: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 3, 1975 in response to a worker petition received on October 3, 1975 which was filed by the Amalgamated Clothing Workers of America on behalf of workers formerly producing men's topcoats and overcoats at Malcolm Kenneth Company, Dorchester, Massachusetts.

The notice of investigation was published in the FEDERAL REGISTER on October 15, 1975 (40 FR 48417). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Malcolm Kenneth Company, its customers, the Department of Commerce, and the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (3) has not been met. The evidence developed in the Department's investigation reveals that imports of men's and boys' overcoats and topcoats declined 11 percent from 1973 to 1974 and dropped 8 percent between the first ten months of 1974 and the same period in 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that imports have not increased as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 16th day of January 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-2379 Filed 1-26-76;8:45 am]

[TA-W-297]

ROBERT HALL MANUFACTURING CO., BROOKLYN, NEW YORK

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-297: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 4, 1975 in response to a worker petition received on November 4, 1975 which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's suits and sportcoats at Robert Hall Manufacturing Co., Inc., Brooklyn, New York.

The notice of investigation was published in the FEDERAL REGISTER on November 19, 1975 (40 FR 53647). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Robert Hall Manufacturing Co., the Clothing Manufacturers Association of the U.S.A., the Department of Commerce, the International Trade Commission, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales, production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average number of production workers at Robert Hall Manufacturing Co., Inc., declined 49 percent in 1974 compared to 1973. The average number of production workers declined 66 percent in the first nine months of 1975 compared to the first nine months of 1974.

Sales or production, or both, have decreased absolutely. Robert Hall Manufacturing Co. sales of men's clothing declined 29 percent in 1974 compared to 1973. Sales declined 39 percent in the first nine months of 1975 compared to the first nine months of 1974.

Production at Robert Hall Manufacturing declined 46 percent in 1974 compared to 1973. Production declined 70 percent in the first nine months of 1975 compared to the first nine months of 1974.

Increased imports contributed importantly. Imports of men's and boys' suits increased from 1.4 million units in 1970 to 1.9 million units in 1974. While imports of men's and boys' suits fell slightly in 1974 compared to 1973, the ratios of imports to domestic production and consumption in 1974 of 9.9 percent and 9.0 percent respectively were well above the 1971-1973 average of 8.6 percent and 7.8 percent respectively.

In the first seven months of 1975 imports of men's and boys' suits increased 131 percent compared to the first seven months of 1974. The ratio of imports to domestic production increased from 7.7 percent in the first seven months of 1974 to 22.1 percent in the first seven months of 1975.

Imports of men's and boys' sportcoats increased from 4.2 million units in 1972 to 4.8 million units in 1974. The ratio of imports to domestic production and consumption increased from 17.1 percent and 14.6 percent respectively in 1972 to 22.3 percent and 18.2 percent respectively in 1974. The ratio of imports to domestic production increased from 24.5 percent in the first seven months of 1974 to 36.7 percent in the first seven months of 1975.

The investigation has indicated that the men's clothing industry in recent years has been subject to the adverse impact of competition by imported men's clothing from low wage areas.

Robert Hall Manufacturing Co., Inc., produces men's and boys' suits and sportcoats for Robert Hall Clothes' retail outlets. Robert Hall Clothes depends on large volume sales that enable it to offer men's clothing at low prices. Its customers readily react to price increases and decreases. Major retail chains which are competitors of Robert Hall Clothes and sell men's and boys' clothing in the same price range as Robert Hall have increased imports of less expensive men's clothing. As a result, consumers have decreased purchases from Robert Hall in favor of less expensive imported clothing offered by other retail chains.

Conclusion. After careful review of the facts obtained in the investigation, I con-

clude that increases of imports like or directly competitive with men's suits and sportcoats produced by Robert Hall Manufacturing Co., Inc., contributed importantly to the total or partial separation of the workers of the firm.

In accordance with the provisions of the Act, I make the following certification:

All hourly, piecework, and salaried workers engaged in employment related to the production of men's and boys' suits and sportcoats at Robert Hall Manufacturing Co., Inc., Brooklyn, New York who became totally or partially separated from employment on or after October 3, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of January 1973.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.76-2380 Filed 1-26-76;8:45 am]

[TA-W-306]

SAINT LAURIE, LTD., NEW YORK, NEW YORK

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-306; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 4, 1975 in response to a worker petition received on November 4, 1975 which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's suits, sportcoats and slacks at Saint Laurie, Ltd., New York, New York.

The notice of investigation was published in the FEDERAL REGISTER on November 19, 1975 (40 FR 53647). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Saint Laurie Ltd., its customers, the Clothing Manufacturers Association of the U.S.A., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average number of production workers at Saint Laurie declined 7 percent in 1974 compared to 1973. The average number of production workers declined 36 percent in the first nine months of 1975 compared to the first nine months of 1974.

Sales of production, or both, have decreased absolutely. Production of suits comprises 95 percent of Saint Laurie's total production. Total production declined 38 percent in 1974 compared to 1973. Production declined 48 percent in the first nine months of 1975 compared to the first nine months of 1974.

Increased imports contributed importantly. Imports of boys' and men's suits increased from 1.4 million units in 1970 to 1.9 million units valued at in 1974. The ratios of imports to domestic consumption and production increased from 8.6 percent and 9.4 percent, respectively in 1972 to 9.0 percent and 9.9 percent in 1974. The imports to production ratio rose from 7.7 percent in the first seven months of 1974 to 22.1 percent in the first seven months of 1975.

The evidence developed during the Departments' investigation indicate that the men's clothing industry has been subject to substantial competition from lower priced imported apparel. Customers of Saint Laurie have decreased purchases of its men's clothing in favor of less expensive imported men's suits that retail in the same price range. This resulted in decreased production and the separation of employees at Saint Laurie beginning in the third quarter of 1974.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits produced by Saint Laurie, Ltd. contributed importantly to the total or partial separation of the workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All hourly, piecework, and salaried workers of Saint Laurie, Ltd. who became totally or partially separated from employment on or after November 2, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of January 1976.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.76-2381 Filed 1-26-76;8:45 am]

[TA-W-292]

WILLIAM P. GOLDMAN & BROS., INC. BROOKLYN, NEW YORK

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-292; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 4, 1975 in response to a worker petition received on November 4, 1975 which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's suits, sportcoats, overcoats and topcoats at the Brooklyn, New York plant of William P. Goldman & Bros., Inc. of New York, New York.

The notice of investigation was published in the FEDERAL REGISTER on November 17, 1975 (40 FR 53328). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of William Goldman, its customers, the Clothing Manufacturers Association of the U.S.A., the U.S. Department of Commerce, the U.S. International Trade Commission and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant total or partial separations. The average number of production workers at the Brooklyn plant decreased 35 percent in the first nine months of 1975 compared to the like period in 1974. Average weekly hours worked declined 8 percent in the first nine months of 1975 compared to the like period in 1974.

Sales or production, or both, have decreased absolutely. About 99 percent of Goldman's production consist of men's suits and sportcoats. Production at the

Brooklyn plant declined 29 percent in the first nine months of 1975 compared to the first nine months of 1974.

Increased imports contributed importantly. Imports of boys' and men's suits increased from 1.4 million units in 1970 to 1.9 million units in 1974. Imports of men's and boys' suits have increased relative to domestic consumption and production in each year from 1971 to 1973. While imports of men's and boys' suits fell slightly in 1974 compared to 1973 the ratios of imports to domestic production and consumption in 1974 of 9.9 percent and 9.0 percent, respectively were well above the 1971–1973 average of 8.6 percent and 7.8 percent, respectively. In the first 7 months of 1975 imports of men' and boys' suits increased 131 percent compared to the first 7 months of 1974. The ratio of imports to domestic production increased from 7.7 percent in the first seven months of 1974 to 22.1 percent in the first seven months of 1975.

Imports of men's and boys' sportcoats increased from 4.2 million units in 1972 to 4.8 million units in 1974. Imports of men's and boys' sportcoats increased their share of the domestic market each year from 1972 to 1974. The ratio of imports to domestic production and consumption increased from 17.1 percent and 14.6 percent, respectively in 1972 to 22.3 percent and 18.2 percent, respectively in 1974. The ratio of imports to domestic production increased from 24.5 percent in the first seven months of 1974 to 36.7 percent in the first seven months of 1975.

Domestic producers of men's clothing including men's suits and topcoats have been adversely affected by a number of factors including increased imports, changing styles and generally poor economic conditions. Not all manufacturers have been affected by the same factors or in the same magnitude.

Goldman's major customers decreased purchases of its clothing because their retail clients resisted buying Goldman's expensive, conservatively tailored clothing. Goldman's major customers have turned to other domestic manufacturers that offer more stylish clothing at generally lower price ranges. Goldman's customers purchased imported clothing in small amounts to offer their own customers a certain look. These purchases, however, were a sideline and have not increased in recent years.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits, sportcoats, topcoats and overcoats produced at the Brooklyn plant of W. P. Goldman & Bros. did not contribute importantly to the total or partial separations of the workers at such plant.

Signed at Washington, D.C., this 16th day of January 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-2382 Filed 1-26-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 960]

ASSIGNMENT OF HEARINGS

JANUARY 22, 1976.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

AB-1 Sub-32, Chicago and North Western Transportation Company Abandonment between Watertown and Doland, in Condington, Clark and Spink Counties, South Dakota, now assigned February 18, 1976, at Watertown, S. Dakota, will be held in the Community Room, Lower Lerel-Codington county Courthouse.

MC 114457 Sub-232, Dart Transit Company, now assigned February 23, 1976, at Omaha, Nebraska, will be held in Room 616, Union Pacific Plaza, 110 North 14th Street.

MC 124211 Sub-259, Silt Truck Line, Inc., now assigned February 25, 1976, at Omaha, Nebraska, will be held in Room 616, Union Pacific Plaza, 110 North 14th Street.

MC-F-12535, Olin R. Flottmann & John H. Myer—Investigation of Control—Beaufort Transfer Company and Langer Truck Line, Inc., now being assigned March 23, 1976, at St. Louis, Mo. (3 Days) in a hearing room to be later designated.

MC-C-8666, Cape Transit Corporation, d.b.a. St. Louis-Cape Bus Line—Investigation and Revocation of Certificate, now being assigned March 22, 1976, (1 Day) at St. Louis, Mo., in a hearing room to be later designated.

MC 139499 Sub 3, U.S. Transport, Inc., now being assigned March 11, 1976, (2 days) at San Francisco, Calif., in a hearing room to be later designated.

MC 32882 Sub 75, Mitchell Bros. Truck Lines, a corp., now being assigned March 16, 1976 (2 days) at San Francisco, Calif., in a hearing room to be later designated.

MC 134609 Sub 1, OilField Service & Trucking, Inc., now being assigned March 18, 1976 (2 days) at San Francisco, Calif., in a hearing room to be later designated.

MC 140937, Go Lines, Inc., now being assigned March 15, 1976 (1 day) at San Francisco, Calif., in a hearing room to be later designated.

Ex Parte 307, Investigation into the distribution and Manipulation of Rail Rolling Stock to Depress Prices on Certain Grain Shipments for Export, now being assigned May 10, 1976 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 119741 (Sub-No. 52), Green Field Transport Company, Inc., now assigned February 3, 1976, at Omaha, Nebr., will be held in Room 616, Union Pacific Plaza, 110 North 14th Street.

AB-27 (Sub-No. 1), Chicago and North Western Transportation Company Abandonment between Somers and Carroll. In Calhoun and Carroll Counties, Iowa, now assigned February 9, 1976, at Carroll, Iowa, will be held in the City Council Chamber, City Hall.

MC 136539 (Sub-No. 4), Afro-Urban Transportation, Inc., now assigned February 11, 1976, at New York, N.Y., is canceled and application dismissed.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.76-2366 Filed 1-26-76;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 22, 1976.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before February 11, 1976.

FSA No. 43116—*Joint Rail-Water Container Rates—Lykes Bros. Steamship Co., Inc.* Filed by Lykes Bros. Steamship Co., Inc., (No. 2), for itself and interested rail carriers. Rates on general commodities, between railroad terminals at U.S. Pacific Coast ports, on the one hand, and ports in the Mediterranean and Black Sea, on the other.

Grounds for relief—Water competition.

Tariffs—Lykes Bros. Steamship Co., Inc., joint container freight tariffs Nos. 3 and 4, I.C.C. Nos. 3 and 4, respectively. Rates are published to become effective on February 20, 1976.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.76-2367 Filed 1-26-76;8:45 am]

[Ex Parte No. 318]

INCREASED FREIGHT RATES AND CHARGES—1976

Authority To File Master Tariff

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 22d day of January 1976.

It appearing, that by petition and verified statements filed January 19, 1976, the railroads listed in Appendix I of the petition and certain water and motor carriers having joint rates with the Appendix I railroads, request the Commission to institute an investigation into the adequacy of freight rates and charges of all railroad common carriers within the United States; to make all such railroad common carriers respondents therein; and to authorize and permit increases in all freight rates and charges within, from, to, and via all territories of 7 percent, effective February 18, 1976, to offset labor cost increases accruing since January 1, 1976, and other cost increases accruing since October 1, 1974, subject to exceptions and holddowns set forth in Appendix II including, among others:

No increase in rates and charges applicable from, to, via or at points on the Long Island Rail Road Company, nor from, to, via, or at points on the Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, and other lines of the Southern Pacific System;

It further appearing, that petitioners seek permission to make the proposed increases effective February 18, 1976, subject to the condition that refunds shall be made in the event that, after such investigation as the Commission deems necessary, no increase or a lesser increase than that requested in the present petition is authorized, and they seek entry of an order modifying all outstanding Commission orders to the extent necessary to enable the railroads to file and make effective the proposed increased rates and charges, and the entry of appropriate orders under Sections 4 and 6 of the Interstate Commerce Act;

It further appearing, that petitioners have filed and served 31 verified statements constituting their evidential case pursuant to the requirements set forth in Procedures Governing Rail Carrier General Increase Proceedings, 49 CFR Part 1102, including certain financial data suggested in Appendix B of the report and order in Ex Parte No. 281, Increased Freight Rates and Charges, 1972, 341 I.C.C. 288;

It further appearing, that petitioners have submitted data of the type called for in Ex Parte No. 290 (Sub-No. 1), Procedures—Rail Car. General Increase Proceedings, 349 I.C.C. 22, namely detailed information on estimated revenues which would have been obtained had the last authorized increase been fully applied, and the actual total increase in revenues realized by application of the last authorized general increase;

It further appearing, that petitioners have given notice of the petition and have furnished data to the public in compliance with Ex Parte No. 286, Notice of Increases in Frt. Rates and Pass. Fares, 349 I.C.C. 741;

It further appearing, that petitioners contend that the requested increases will have no significant adverse effects upon the movement of the traffic or transportation of recyclable commodities by rail;

It further apearing, that any person or persons believing that the requested increases, if allowed to become effective, would have a signficant impact upon the quality of the human environment are hereby invited to comment upon this matter in the protests or verified statements authorized to be filed pursuant to this order, and that environmental matters and requirements of the National Environmental Policy Act of 1969 will be fully considered by the Commission in any subsequent action on the merits of the requested general increases;

And it further appearing, that by Special Permission Order No. 76-2500 served herewith, the Commission is authorizing the filing of tariff schedules increasing rates and charges sought in the petition, to become effective upon not less than 30 days' notice to the Commission and the general public, subject to protest and possible suspension as provided by the Interstate Commerce Act, and modifying outstanding orders to the extent necessary to permit that filing, and good cause appearing therefor;

It is ordered, that all common carriers by railroad be, and they are hereby, made respondents to this proceeding.

It is further ordered, that pursuant to the special permission authority granted this date, the schedules shall be published and filed upon not less than 30 days' notice effective not earlier than February 24 nor later than March 24, 1976,[1] subject to protest and possible suspension by the Commission, said schedules to contain an appropriate refund provision. Protests and/or verifiied statements shall be filed on or before February 11, 1976, in accordance with procedures hereinafter set forth;

It is further ordered, that in order that the public may be fully informed on the prospective actual effects of the proposal, on or before January 28, 1976, railroad petitioners shall file with the Commission and serve upon the parties of record in the last general increase proceeding[2] a further statement concerning the manner in which petitioners intend to resolve the problems created by the apparent non-participation in the proposed 7-percent increase of Southern Pacific System railroads and the Long Island Rail Road Company. This supplemental statement shall, in addition to the information set forth in the petition, further explain how petitioners intend to resolve the apparent disruption of port relationships and possible violations of sections 2, 3, and 4 which may occur as a result of the proposed exceptions, or competitive exceptions that may be compelled by the non-participation of certain railroads in the increase.

It is further ordered, That any person opposing or wishing to comment on the proposed 7 percent increase in rates and charges shall file and serve verified statements and arguments or unverified protests,[3] or both, as provided below, on or before February 11, 1976.

(a) The verified statements shall contain all evidence relevant and material to the issues in this proceeding which the parties desire to have considered by the Commission and will be considered as submitted in evidence along with the verified statements of the respondents, as a basis for a decision by the Commission on the merits. Any submission on asserted environmental impact shall be set forth under an appropriate subheading in order to properly identify such subject matter.

(b) Verified statements may include arguments in support of an affiant's position but such argument shall be set forth in a separate section of the document containing the verified statement. If desired, such argument may be contained in a separate document simultaneously filed and served. Request for oral argument, if any, will be disposed of by further order of the Commission.

(c) Each verified statement shall be signed in ink by affiant and verified (notarized) in the manner provided by Rule 50 and Form No. 6 of the Commissions general rules of practice (See 49 CFR 1100.50 and Appendix B, Form No. 6, to 49 CFR Part 1100). The post office address of affiant or his counsel shall be shown.

(d) Verified statements and arguments shall be filed and served as follows:

The original and 24 copies of each such document for the use of the Commission shall be sent to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, except that a lesser number of copies may be filed upon showing of good cause.

One copy shall be served upon the representative of the petitioning railroads, Harry L. De Lung, Jr., Esq., 527 American Railroads Building, 1920 "L" Street, N.W., Washington, D.C. 20036, which service shall constitute service upon all respondents. However, all parties able to do so shall serve 25 copies upon the railroads' representative.

In all cases, where service is made by mail, the document shall be mailed in time to be received by the respective due dates.

(e) Each verified statement shall contain a certificate of service stating that it has been timely served on opposing parties, as herein provided, and verified statements not so served will not be considered.

(f) Verified statements and arguments by persons opposed to the proposed increases in rates and charges shall include all matters which they desire the Commission to consider with respect to statutory suspension of the rates pending completion of the investigation, as well as evidence relevant to the ultimate decision.

(g) Any party who does not desire to submit verified statements, of evidence, as described above, may file and serve in like fashion unverified protests which will be considered by the Commission *only* with respect to the issue of suspension.

It is further ordered, That on or before February 17, 1976, the respondents shall file with the Commission and serve upon opposing parties such replies to protests or other pleadings seeking suspension, and rebuttal evidence on the merits of the proceeding as they desire to present. Such evidence shall be in the form and served in the same manner as the opening statements filed in accordance with the regulation published in 49 CFR 1102, except that replies and rebuttal evidence need be served only upon the party (and his counsel if known) to whose evidence the reply or rebuttal is directed. Such statements shall, however, be furnished to other interested parties upon request.

It is further ordered, That the request for fourth-section relief will be considered following the filing of protests and statements in opposition and replies thereto;

[1] In the event the tariff is not filed prior to January 25, 1976, the due date specified for filing of protests and vertified statements will be extended to a date 15 days prior to the effective date.

[2] Copies of the statement shall be furnished to other interested persons on request.

[3] See paragraph (g).

And it is further ordered, That in all other respects the petition be, and it is hereby, denied.

SPECIAL PERMISSION NO. 76-2500

It is ordered, for good cause shown. 1. All railroads, and water and motor carriers to the extent they have joint rates with the railroads, and their tariff-publishing agents, be, and they are hereby, except as otherwise provided herein, authorized to depart from the Commission's tariff publishing rules in Tariff Circular No. 20 (49 CFR Part 1300), when publishing and filing tariffs, and tariff amendments, to become effective upon not less than 30 days' notice to the Commission and the public but not earlier than February 24, 1976, nor later than March 24, 1976, providing for increased rates and charges as set forth in the petition:

(a) By publishing and filing a master tariff of increased rates and charges, and supplements thereto, providing increases by means of conversion tables of rates and charges, which shall include, and maintain in effect, a refund provision reading as follows:

In the event any increase resulting from the application of this tariff is the increases subsequently approved or prescribed by the Interstate Commerce Commission, the carriers will refund the difference between the increase resulting from the application thereof and any increases which may subsequently be approved or prescribed by the Interstate Commerce Commission with four percent interest.

In the event any increase resulting from the application of this tariff exceed disapproved by the Commission and no increase is authorized, the carriers will refund the full amount of the increase collected with four percent increase.

The master tariff shall be indicated to expire on interstate and foreign commerce with a date not beyond one year after the effective date, which may not be extended or cancelled except upon specific authorization of this Commission, and all relief herein expires with that date. The master tariff must initially contain all provisions for application of the increases (including provisions for no increase, part of the overall proposal) following which (unless suspended) any provisions other than those of a general character may be cancelled and transferred to the particular tariffs affected upon a common effective date with appropriate notation that effect in the master tariff amendment.

(b) By publication and filing of a connecting link supplement to each tariff to be made subject to the master tariff, connecting such tariffs with the master. Such supplements may be blanket supplements (a common supplement issued to two or more tariffs).

(c) The master tariff and connecting link supplements issued and filed hereunder shall not provide for nonapplication on interstate traffic competitive with intrastate traffic between the same points unless the interstate rates and routes are specifically identified in the connecting link supplements.

(d) By publication and filing of tariffs or amendments to tariffs effective concurrently with the master tariffs and upon the same notice which provide specifically increased rates and charges but which do not result in an increase in charges for transportation and other services greater than those specified in the petition, provided all such publication is identified in the tariffs and made subject to a refund clause worded substantially as in paragraph 1 (a) herein.

(e) By publication of provisions in tariffs or amendments thereto subjecting rates and charges therein to the provisions of the master tariff, subject to the restriction in (c) above.

2. (a) The master tariff, as amended, and all other tariffs and amendments to tariffs, that employ the short-form methods authorized herein shall bear the notation:

Form of publication authorized, I.C.C. permission No. 76-2500

(b) Tariffs or amendments to tariffs publishing specifically increased rates or charges hereunder shall bear a notation reading:

Publication made in accordance with I.C.C. permission No. 76-2500

3. Connecting-link supplements authorized herein shall be exempt from the Commission's tariff-publishing rules governing the number of supplements and the volume of supplemental matter permissible.

4. The master tariff filed hereunder shall not be amended except to correct errors and to comply with findings and orders of the Commission, except when specifically authorized to do so. The terms of rule 9(e) (49 CFR 1300.9(e)) are not waived as to supplements to the master tariff.

5. Outstanding orders of the Commission are hereby modified only to the extent necessary to permit the filing of tariff publications containing the proposed increases, and all tariff publications filed shall be subject to protest and possible suspension and rejection. In that regard, we direct petitioners' attention to our admonitions in prior general increase proceedings concerning maintenance and preservation of existing port relationships. See, for example, Increased Freight Rates and Charges, 1972, 341 I.C.C. 288, 336, and Increased Freight Rates, 1970 and 1971, 339 I.C.C. 125, 188. The rate increase table on grain shall progress in one-half cent increments.

It is further ordered, That future orders and notices of the Commission in this proceeding will be sent only to those participating as herein provided, and those interested persons who specifically request to be included on the service list.

And it is further ordered, That notice of this order be given by serving a copy thereof on each party to the proceeding in Ex Parte No. 313, to the Governor and public utility regulatory body of each State, the Environmental Protection Agency, the Special Assistant to the President for Consumer Affairs, and by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register for publication in the FEDERAL REGISTER.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.76-2365 Filed 1-26-76;8:45 am]

[Notice 10]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 21, 1976.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicted, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the I.C.C. Field Office to which protests are to be transmitted.

No. MC 42011 (Sub-No. 21TA), filed January 12, 1976. Applicant: D.Q. WISE & CO., INC., 13309 E. Apache Street, P.O. Box 15125, Tulsa, Okla. 74115. Applicant's representative: James W. Hightower, 136 Wynnewood Professional Bldg., Dallas, Texas 75224. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles* (except commodities in bulk), from the plantsite and facilities of National Pipe and Tube Company, located in Liberty County, Tex., to points in Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Texas, Utah,

Wisconsin, and Wyoming; and (2) *materials, equipment and supplies*, used in the manufacture, processing and distribution of iron and steel articles (except commodities in bulk), from points in Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Texas, Utah, Wisconsin, and Wyoming, to the plantsite and facilities of National Pipe and Tube Company, located in Liberty County, Tex., restricted in Parts (1) and (2) above to traffic originating at and destined to the named plantsite and facilities of National Pipe and Tube Company and the named states, for 180 days. Supporting shipper: National Pipe and Tube Company, 20th and State Streets, Granite City, Ill. 62040. Send protests to: Larry Chapman, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, Room 240 Old Post Office Building, 215 Northwest Third, Oklahoma City, Okla. 73102.

No. MC 63417 (Sub-No. 81TA), filed January 13, 1976. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, P.O. Box 2888, 1814 Hollins Road, Roanoke, Va. 24034. Applicant's representative: William E. Bain, P.O. Box 13447, Roanoke, Va. 24034. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Dublin, Ga., to points in Alabama, Arkansas, Louisiana, Mississippi, Oklahoma and Texas, for 180 days. Supporting shipper: Bassett Furniture Industries, Bassett, Va. Send protests to: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, Va. 24011.

No. MC 63417 (Sub-No. 82TA), filed January 13, 1976. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, P.O. Box 2888, 1814 Hollins Road, Roanoke, Va. 24034. Applicant's representative: William E. Bain, P.O. Box 13447, Roanoke, Va. 24034. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Dublin and Macon, Ga., to points in Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, South Carolina, Tennessee, North Carolina, Ohio, Virginia, West Virginia and the District of Columbia, for 180 days. Supporting shipper: Bassett Furniture Industries, Bassett, Va. Send protests to: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Comerce Commission, P.O. Box 210, Roanoke, Va. 24011.

No. MC 75331 (Sub-No. 2TA), filed January 9, 1976. Applicant: CATHERINE B. MOSER, dba C. B. MOSER, 28 Ritters Lane, Owings Mills, Md. 21117. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paperboard*, from Baltimore, Md., to Harrington, Del.; and (2) *scrap paper and empty skids*, from Harrington, Del., to Baltimore, Md., under a continuing contract or contracts with The Chesapeake Paperboard Company, Baltimore, Md., for 180 days. Supporting shipper: The Chesapeake Paperboard Co., Fort Avenue & Woodall Street, Baltimore, Md. 21230. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Building, Baltimore, Md. 21201.

No. MC 76065 (Sub-No. 30TA) (Correction), filed December 16, 1975, published in the FEDERAL REGISTER issue of January 7, 1976 as MC 16065 (Sub-No. 30TA), and republished as corrected this issue. Applicant: EHRLICH-NEWMARK TRUCKING CO., INC., 505-509 West 37th Street, New York, N.Y. 10001. Applicant's representative: Michael R. Werner, 2 West 45th Street, New York, N.Y. 10036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel*, on hangers *and materials, supplies and equipment*, used in the manufacture of wearing apparel, (except commodities in bulk), between Philadelphia, Pa., and Seaford, Del., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Bleeker Street Apparel Corp., 10101 Roosevelt Blvd., Philadelphia, Pa. 19154. Send protests to: Paul W. Assenza, District Supervisor, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

NOTE.—The purpose of this republication is to indicate the correct docket number assigned to this proceeding.

No. MC 83835 (Sub-No. 126TA), filed January 13, 1976. Applicant: WALES TRANSPORTATION, INC., P.O. Box 6186, Dallas, Texas 75222. Applicant's representative: James W. Hightower, 136 Wynnewood Professional Bldg., Dallas, Texas 75224. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, (except commodities in bulk), from the plantsite and facilities of National Pipe and Tube Company, located in Liberty County, Tex., to points in the United States (except Alaska, Hawaii, and Texas); and (2) *materials, equipment, and supplies*, used in the manufacture, processing and distribution of iron and steel articles (except commodities in bulk), from points in the United States (except Alaska, Hawaii, and Texas), to the plantsite and faciilties of National Pipe and Tube Company, located in Liberty County, Tex., restricted in Parts (1) and (2) above to traffic originating at and destined to the named plantsite and facilities of National Pipe and Tube Company and the named States, for 180 days. Supporting shipper: National Pipe and Tube Company, 20th and State Streets, Granite City, Ill. 62040. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 95490 (Sub-No. 38TA), filed January 13, 1976. Applicant: UNION CARTAGE COMPANY, 9A Southwest Cutoff, Worcester, Mass. 01604. Applicant's representative: Leonard A. Jaskiewicz, Suite 501, 1730 M St., NW., Washington, D.C. 20036. Authority sought to operate as a *common vehicle*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from Latrobe, Pa., to Hawthorne (Westchester County), N.Y., for 18 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Carmelo Bambace, Inc., P.O. Box 268, 5 W. Cross Street, Hawthorne, N.Y. Send protests to: District Supervisor J. D. Perry, Jr., Interstate Commerce Commission, 338 Federal Building & U.S. Courthouse, 436 Dwight Street, Springfield, Mass. 01103.

No. MC 105813 (Sub-No. 209TA), filed January 12, 1976. Applicant: BELFORD TRUCKING CO., INC., P.O. Box 1936, 1759 SW. 12th Street, Ocala, Fla. 32670. Applicant's representative: Arthur J. Sibik, 7000 South Pulaski Road, Chicago, Ill. 60629. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities*, as is dealt in by chain stores, and *advertising material, fixtures and equipment*, incidental to the sale thereof, in mechanically refrigerated equipment, from Chicago, Ill. and points in its Commercial Zone, to Demopolis, Ala.; Orlando and Quicky, Fla.; Cairo and Statesboro, Ga.; Greenville, Ky.; Lafayette and Shreveport, La.; Warsaw, N.C.; Scranton, S.C.; Knoxville, Tenn.; Bluefield and Waynesboro, Va.; and Huntington, W. Va., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Independent Grocers' Alliance Distributing Co., 5725 East River Road, Chicago, Ill. 60631. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 107403 (Sub-No. 959TA), filed January 13, 1976. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative John Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tallow*, in bulk, in tank vehicles, from Violet, La., to El Dorado, Ark., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gulf Soap Corporation, P.O. Box 125, Violet, La. 70092. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch Street, Room 3238, Philadelphia, Pa. 19106.

No. MC 108461 (Sub-No. 125TA), filed January 9, 1976. Applicant: WHITFIELD TRANSPORTATION, INC., P.O. Drawer 15469, Salt Lake City, Utah 84117. Applicant's representative: William S. Richards, 1515 Walker Bank Building, P.O. Box 2465, Salt Lake City, Utah 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except classes A

and B explosives, commodities which because of their size or weight require special equipment, commodities in bulk and household goods as defined by the Commission), between Yuma and Phoenix, Ariz.: From Yuma, Ariz., over Interstate Highway 8 to Gila Bend, Ariz., thence over U.S. Highway 80 to Phoenix, Ariz., and return over the same routes, serving all intermediate points between Wellton and Phoenix, Ariz., and points within twenty-five (25) miles of Phoenix, Hyder, and Roll, Ariz., as off-route points including service at the Commercial Zones of the authorized service points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Joinder: The requested authority will be joinded at Phoenix, Ariz. with applicant's authority in MC 108461 (Sub-No. 114). Interline: Applicant states it intends to interline at Yuma and Phoenix, Ariz. Supporting shippers: There are approximately 174 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 3427 Federal Bldg., 230 N. First Avenue, Phoenix, Ariz. 85025.

No. MC 112520 (Sub-No. 312TA), filed January 12, 1976. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, 122 Appleyard Drive, Tallahassee, Fla. 32302. Applicant's representative: Sol H. Proctor, 1107 Blackstone Building, Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Molten sulphur*, in bulk, in tank vehicles, from Chatom, Ala., to Pascagoula, Miss., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lloyd Chemical Sales, Inc., P.O. Box 2393, Midland, Tex. 79701. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 114789 (Sub-No. 54TA), filed January 8, 1976. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Donald L. Stern, 530 Univac Bldg., Omaha, Nebr. 68106. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities*, as are dealt in by retail department stores (except foodstuffs), (1) from points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia, to points in Illinois, Indiana, Michigan, Minnesota, North Dakota, Ohio and Wisconsin; and (2) from points in Illinois, Indiana, Michigan, Ohio and Wisconsin, to points in Minnesota and North Dakota, under a continuing contract or contracts with Gamble-Skogmo, Inc., for 180 days. Supporting shipper: Gamble-Skogmo, Inc., 5100 Gamble Drive, Minneapolis, Minn. 55416. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 114896 (Sub-No. 32TA) filed January 7, 1976. Applicant: PUROLATOR SECURITY, INC., 3333 New Hyde Park Road, New Hyde, N.Y. 11040. Applicant's representative: John M. Delany (same as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coin, currency and checks*, between Springfield, Mass., on the one hand, and, on the other, Berlin, Branford, Bristol, Brookfield, Enfield, Hamden, Hartford, Manchester, Newington, North Haven, Rocky Hill, Southington, Brumbull, Wallingford, West Hartford and Westport, Conn., under contracts with banks and banking institutions, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Food Mart, Inc.—Division of Waldbaum, 227 South Street, Holyoke, Mass. 01040. Send protests to: Opal M. Jones, Transportation Specialist, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, Texas 75202.

No. MC 116300 (Sub-No. 22TA), filed January 12, 1976. Applicant: NANCE AND COLLUMS, INC., P.O. Drawer J, Fernwood, Miss. 39635. Applicant's representative: Harold D. Miller, Jr., P.O. Box 22567, Jackson, Miss. 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, in bulk, from Avery Island, Anse Labutte, Baldwin, Jefferson Island and Weeks Island, La., to points in Florida, Georgia and Tennessee, for 180 days. Supporting shippers: Cargill Incorporated, Salt Dept., Cargill Bldg., Minneapolis, Minn. 55402, International Salt Company, 1600 Tullie Circle, Suite 133, Atlanta, Ga. 30329, Diamond Crystal Salt Company, P.O. Box 194, New Iberia, La. 70560. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Bldg., Jackson, Miss. 39201.

No. MC 117119 (Sub-No. 519TA), filed January 13, 1976. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: L. M. McLean (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, medicines, and toilet preparations, related advertising and display materials*, (except in bulk), in mechanically refrigerated vehicles, from Clifton and Mays Landing, N.J. and Memphis, Tenn., to Sparks, Nev., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Cyanamid Company, Berdan Avenue, Wayne, N.J. 07470. Send protests to: District Supervisor William H. Land, Jr., Interstate Commerce Commission, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201.

No. MC 120184 (Sub-No. 10TA), filed January 12, 1976. Applicant: PEP LINES TRUCKING CO., 15120 Third Avenue, Highland Park, Mich. 48203. Applicant's representative: J. A. Kundtz, 1100 National City Bank Building, Cleveland, Ohio 44114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, those requiring special equipment, classes A and B explosives, household goods as defined by the Commission, and commodities of unusual value), between Detroit, Mich., on the one hand, and, on the other, points in Wayne, Monroe, Lenawee, Washtenaw, Livingston, Macomb, Genesee, Lapeer, St. Clair, and Oakland Counties, Mich., points in that part of Shiawassee County, Mich., on and east of Michigan Highway 52, points in that part of Jackson County, Mich, east of Michigan Highway 127, and those in that part of Ingham County, Mich., on and east of a line beginning at the intersection of its southern boundary with Michigan Highway 52 to junction with the northern boundary of Ingham County, for 180 days. Supporting shippers: Encyclopedia Britannica, Inc., 425 North Michigan Avenue, Chicago, Ill. 60611, Aldens, Inc., 5000 W. Roosevelt Road, Chicago, Ill. 60607, and Spiegel, Inc., 2511 West 23rd Street, Chicago, Ill. 60608. Send protests to: Melvin F. Kirsch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell Avenue, Detroit, Mich. 48226.

No. MC 124328 (Sub-No. 88TA), filed January 12, 1976. Applicant: BRINK'S, INCORPORATED, 234 E. 24th Street, Chicago, Ill. 60616. Applicant's representative: Richard H. Streeter, 704 Southern Building, Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precious metals, dore bullion and precious metal products*, between Omaha, Nebr.; Amarillo, Tex.; and Perth Amboy, N.J., under a contract with ASARCO Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: ASARCO Inc., 120 Broadway, New York, N.Y. 10005. Send protests to: Transportation Specialist Patricia A. Roscoe, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 126436 (Sub-No. 11TA), filed January 13, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, 3901 Jonesboro Road, SE., Forest Park, Ga. 30050. Applicant's representative: Richard M. Tettelbaum, Suite 375, 3379 Peachtree Rd., NE., Atlanta, Ga. 30326. Authority sought to operate as a *contract carrier*, by motor vehicle, over

irregular routes, transporting: *Steel shot*, (except ammunition), from Mishawaka, Ind., to points in Alabama, Louisiana and Texas, under a continuing contract with Wheelabrator-Frye, Inc., for 180 days. Supporting shipper: Wheelabrator-Frye, Inc., 400 S. Bryket Avenue, Mishawaka, Ind. 46544. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, 1252 W. Peachtree St., NW., Room 546, Atlanta, Ga. 30309.

No. MC 127042 (Sub-No. 165TA), filed January 12, 1976. Applicant: HAGEN, INC., 3232 Highway 75 North, P.O. Box 98—Leeds Station, Sioux City, Iowa 51108. Applicant's representative: Robert G. Tessar (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (except frozen or in bulk), from the plantsite and storage facilities utilized by The Clorox Company at Kansas City, Mo., to points in South Dakota, Nebraska, and Iowa, for 180 days. Supporting shipper: The Clorox Company, 7901 Oakport Street, Oakland, Calif. 94621. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 128638 (Sub-No. 11TA), filed January 12, 1976. Applicant: CENTRAL GRAIN HAULERS, INC., Route 1, Van Meter Road, P.O. Box 746, Winchester, Ky. 40391. Applicant's representative: George M. Catlett, 703–706 McClure Building, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, (1) from points in Carter County, Ky., to points in Ohio (except Beverly and Belpre and points in Ashtabula, Cuyahoga, Lake, Summit, Muskingum, Licking, Wayne, Hancock, Lucas, Ottawa and Wood Counties, Ohio), and (2) from points in Floyd County, Ky., to Logan, W. Va., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Glenn Jenkins, Pres., Kentucky Leasing Company, Inc., P.O. Box 746, Winchester, Ky. 40391, and William E. Busener, Pres., Vamco Products, Inc., 438 Springfield Pike, Cincinnati, Ohio 45215. Send protests to: R. W. Schneiter, District Supervisor, Interstate Commerce Commission, 216 Bakhaus Building, 1500 West Main Street, Lexington, Ky. 40505.

No. MC 136267 (Sub-No. 5TA), filed January 12, 1976. Applicant: BELS PRODUCE CO., INC., 11357 Vienna Road, P.O. Box 348, Montrose, Mich. 48457. Applicant's representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, Mich. 48167. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pickles and related pickle products*, not refrigerated, and not in bulk, from the facilities of Vlasic Foods, Inc. at Greenville, Miss., to points in Georgia, Alabama, Tennessee, Oklahoma, Texas, Arkansas, Louisiana and Colorado. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Vlasic Foods, Inc., 33200 West 14 Mile Road, W. Bloomfield, Mich. 48033. Send protests to: Melvin F. Kirsch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell, Detroit, Mich. 48226.

No. MC 136897 (Sub-No. 15TA) filed January 13, 1976. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 W. Elwood Road, Phoenix, Ariz. 85008. Applicant's representative: Donald E. Fernaays, Suite 320, 4040 East McDowell Rd., Phoenix, Ariz. 85008. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Pueblo, Colo., to points in California, under a contract with CF&I Steel Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: CF&I Steel Corporation, P.O. Box 316, Pueblo, Colo. 81002. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 3427 Federal Building, 230 N. First Avenue, Phoenix, Ariz. 85025.

No. MC 138482 (Sub-No. 4TA), filed January 12, 1976. Applicant: SPACEMASTER TRUCKING CORP., P.O. Drawer E, Charleston Heights, S.C. 29405. Applicant's representative: Carl Steiner, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Display racks and stands*, and *display racks and stands containing hosiery*, (a) from Burlington, Concord and Creedmoor, N.C., to points in the United States (except Alaska and Hawaii); and (b) from San Bernardino, Calif., to points in Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming, under a contract with Kayser-Roth Hosiery Company, Inc., for 180 days. Supporting shipper: Kayser-Roth Hosiery Company, Inc., P.O. Box 820, Burlington, N.C. 27220. Send protests to: E. E. Stroheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, S.C. 29201.

No. MC 139341 (Sub-No. 5TA), filed January 12, 1976. Applicant: J. J. PERRY, JR. AND EDWARD BAILEY, d./b./a. P & B TRUCKING COMPNAY, R.F.D., Horn Lake, Miss. 38637. Applicant's representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, Jackson, Miss. 39205. Authority sought to operate at a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brewers grain*, in bulk, in dump vehicles, from Memphis, Tenn., to the facilities of Murphy Products Company, Inc., at Longview, Tex., under a contract with Murphy Products Company, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Murphy Products Company, Inc., 124 South Dodge Street, Burlington, Wis. 53105. Send protests to: Transportation Specialist Kenneth R. Inman, Interstate Commerce Commission, Bureau of Operations, 435 Federal Office Bldg., 167 North Main St., Memphis, Tenn. 38103.

No. MC 140898 (Sub-No. 2TA), filed January 13, 1976. Applicant: KENDRICK TRUCKING CORP., 11610 Chasewood Court, Louisville, Ky. 40229. Applicant's representative: William P. Whitney, Jr., 703–706 McClure Building, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Repair and maintenance parts*, for mining, earth moving, quarrying equipment and vehicles used in mining, earth moving, and quarrying, from Cleveland and Hudson, Ohio; Jackson and Benton Harbor, Mich.; and Chicago, Ill., to points in Jefferson and Perry Counties, Ky. and Wise County, Va., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Shelton Witt Equipment Corp., P.O. Box 1158, Wise, Va. 24292, Midco Kentucky Company, Inc., R #8, Box 819, Hazard, Ky. 41701, and Midco Kentucky Corporation, A Division of Midco Equipment Co., 8500 Grade Lane, Louisville, Ky. Send protests to: Elbert Brown, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, 426 P.O. Bldg., Louisville, Ky. 40202.

No. MC 141552 (Sub-No. 1TA), filed January 12, 1976. Applicant: JAMES R. SMITH POULTRY AND PRODUCE CO., INC., P.O. Box 790, Cullman, Ala. 35055. Applicant's representative: John Tucker, 410 Brown-Marx Bldg., Birmingham, Ala. 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages, pallets, can openers and malt beverage advertising materials*, when moving in the same vehicle with malt beverages, from Baltimore, Md., to points in Jefferson County, Ala.; and (2) *empty malt beverage containers and pallets*, from Jefferson County, Ala., to Baltimore, Md., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sterling & Pabst Distributors, Inc., 501 Sixth Avenue South, Birmingham, Ala. 35205. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616–2121 Building, Birmingham, Ala. 35203.

No. MC 141619 (Sub-No. 1TA) filed January 9, 1976. Applicant: LOY E. SIGMON, SR., d.b.a., NEW WAY TRANSPORTATION CO., Route 1, Box 447–A, Statesville, N.C. 28677. Applicant's representative: George W. Clapp, P.O. Box 836, Taylors, S.C. 29687. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, between points in Iredell County, N.C., and Wilmington, N.C. and its commercial zone, on the one hand, and, on the other, points in Tennessee on and east of U.S. Highways 11

and 11W, and points in Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: W. R. Grace & Co., Agricultural Chem. Grp., P.O. Box 368, Wilmington, N.C. 28401. Send protests to: Terrell Price, Interstate Commerce Commission, 800 Briar Creek Road, Suite CC516, Charlotte, N.C. 28205.

No. MC 141642 (Sub-No. 1TA), filed December 23, 1975. Applicant: ARCTIC LIGHTERAGE COMPANY, P.O. Box 3783, Seattle, Wash. 98124. Applicant's representative: John Cunningham, 1776 F Street, NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, (except household goods as defined by the Commission), (1) between points in Nome, Alaska and points within five (5) miles thereof, and (2) between Kotzebue, Alaska and points accessible thereto by public highway on the Kotzebue Peninsula, on traffic originating at or destined to points beyond Alaska, for 180 days. Supporting shippers: There are approximately 8 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 141651 (Sub-No. 1TA), filed January 9, 1976. Applicant: GROVE TRANSPORT, INC., 156 Carlough Road, Upper Saddle River, N.J. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metals and chemicals* (except commodities in bulk in tank and dump vehicles), from points in the New York, N.Y. Commercial Zone, as defined by the Commission, to points in New Jersey, New York, Connecticut, Pennsylvania, Massachusetts, Maryland and Delaware; and (2) *materials and supplies*, used in the manufacture and sale of metals and chemicals (except commodities in bulk in tank and dump vehicles), from the above destination states to the above origins, under a continuing contract or contracts with Guggenheim International Corporation, and Intsel Corporation, Jersey City, N.J., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Intsel Corporation, 825 Third Ave., New York, N.Y., and Guggenheim International Corporation, 215–14th Street, Jersey City, N.J. 07302. Send protests to: District Supervisor Joel Morrows, Interstate Commerce Commission, 9 Clinton Street, Newark, N.J. 07102.

WATER CARRIER APPLICATION

W–1299 TA (Correction), filed December 23, 1975, published in the FEDERAL REGISTER issue of January 13, 1976 as W–1299 (Sub-No. 1 TA), and republished as corrected this issue. Applicant: ARCTIC LIGHTERAGE COMPANY, P.O. Box 3783, Seattle, Wash. 98124. Applicant's representative: John Cunningham, 1776 F Street, NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by water, transporting: *General commodities*, by self-propelled vessels and by non-self-propelled vessels with the use of separate towing vessels, and by towing vessels in the performance of general towage during the season extending April 1 to November 1 of each year, both dates inclusive. Applicant requests to temporary authority to operate: Between points (1) including Kotzebue, on and along the Noatak, Kobuk and Selawick Rivers (to their respective heads of navigation), and Selawick Lake, traversing Hotham Inlet; (2) along the Buckland and Kiwalik Rivers to their respective heads of navigation; (3) along the Yukon River below and including Nulato; (4) including Naknek, along the Naknek River below and including King Salmon; and (5) along the Kuskokwim River below and including Bethel, for 180 days. Supporting shippers: There are approximately 8 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations Interstate Commerce Commission, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

NOTE.—The purpose of this republication is to indicate the correct docket number in this proceeding. The application notice which appeared in the FEDERAL REGISTER issue of January 13, 1976 under this lead number should be disregarded.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.76-2368 Filed 1-26-76;8:45 am]

federal register

TUESDAY, JANUARY 27, 1976

PART II:

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

■

RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Miscellaneous Amendments; Correction

Title 1—General Provisions

CHAPTER III—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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

Miscellaneous Amendments

Correction

NOTE: FR Doc. 76-641 was published as the Part III on page 1868 in the issue of Monday, January 12, 1976. Several corrections have been made in the codification. For the convenience of the reader, this document is being republished in its entirety.

The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571-576, to study the efficiency, adequacy and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and to make recommendations for improvement to administrative agencies, collectively or individually, to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

The Administrative Conference of the United States at its Thirteenth Plenary Session, held December 11-12, 1975, adopted six recommendations regarding the procedures of the Internal Revenue Service in administering the tax laws. Each recommendation contains a series of proposals for improved procedures with respect to a discrete area of tax administration.

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

Sec.

305.75-5 Internal Revenue Service Procedures: The Audit and Settlement Processes (Recommendation No. 75-5).

305.75-6 Internal Revenue Service Procedures: Collection of Delinquent Taxes (Recommendation No. 75-6).

305.75-7 Internal Revenue Service Procedures: Civil Penalties (Recommendation No. 75-7).

305.75-8 Internal Revenue Service Procedures: Tax Return Confidentiality (Recommendation No. 75-8).

305.75-9 Internal Revenue Service Procedures: Taxpayer Services and Complaints (Recommendation No. 75-9).

305.75-10 Internal Revenue Service Procedures: The IRS Summons Power (Recommendation No. 75-10).

2. Section 305.75-5 is added to Part 305 to read as follows:

§ 305.75-5 Internal Revenue Service Procedures: The Audit and Settlement Processes (Recommendation No. 75-5).

(a) *Individual Agent's Requisition of Returns for Audit.* The Internal Revenue Service should amend its procedures whereby an examining officer requisitions a tax return for the purpose of audit. The procedures should assure that the examining officer will make an adequate written explanation of his need to have the file, and that such explanation accompany the requisition and be reviewed by the requesting officer's Group Manager. For returns that are requisitioned for reasons so routine as to make detailed written explanation unnecessary, however, a code number designating the reason for selection in each case should suffice. The categories of routine reasons for requisition should be specifically and narrowly defined in the Internal Revenue Manual.

(b) *Notification of Reasons for Selection for Audit.* (1) Each individual taxpayer should be given, at the time he is notified of the selection of his return for audit, a brief written statement of the selection program or other criterion on the basis of which his return was selected for audit. To the extent feasible, the selection of returns for audit should be made pursuant to programs and criteria established in advance.

(2) The Internal Revenue Service should annually publish statistics, by income level, showing the number of returns examined, the results of the examinations, and other pertinent information, for each of its selection programs and criteria.

(c) *Repetitive Audits.* The Internal Revenue Service should establish the following procedures to be observed with respect to an individual who has undergone one or more audits with respect to the three preceding taxable years resulting in no change or only small change in his tax liability.

(1) The district office's Returns Program Manager should not assign that individual's return to an audit group unless it is accompanied by an adequate file reflecting such recent audit experience.

(2) Before contacting the taxpayer, the Group Manager and the examining officer should carefully review the current return in light of the taxpayer's past audit history to determine whether the issues presented by the current return are similar to those of prior audits. If they are, the current year's return should not be further examined unless there is compelling reason to believe that a substantial tax change will result.

(3) When it is decided that the return should be further examined, then, before the examining officer commences his review of the taxpayer's books and records, the taxpayer should be informed in writing that he may inquire about the necessity for this repetitive audit.

Taxpayer Compliance Measurement Program (TCMP) audits should not be subject to the foregoing procedures.

(d) *Review of Audit Selection.* The Internal Revenue Service should carry out a systematic ongoing evaluation of its selection of taxpayers' returns for audit. It should at a minimum maintain procedures whereby the reasons for audit selection, as indicated by Service personnel on Forms 1247 (Examination Record) or 4298 (Audit Requisition and Information Report), can be verified for appropriateness and accuracy. The procedures established should be sufficient to enable the Joint Committee on Internal Revenue Taxation or other Congressional oversight body to obtain listings of all or a specified portion of the returns selected for audit, identified by any of the following characteristics: taxpayer name and identification number; return document locator number; specific (coded) reason for selection; year for which return was filed; date of audit selection; and date of audit completion.

(e) *Staffing for TCMP Audits.* To minimize the time of taxpayers and of Service personnel devoted to the income tax aspects of the Taxpayer Compliance Measurement Program (TCMP), the Internal Revenue Service should select from among its most capable and experienced Revenue Agents and Tax Auditors the personnel to conduct TCMP income tax audits and related research projects.

(f) *Advice to Taxpayers Regarding Retention of Records.* The Internal Revenue Service should annually endeavor to inform each taxpayer (1) that an audit of his return, should there be one, will not likely commence for some period of time after the return has been filed; (2) that the taxpayer should retain, for use in case of audit, a copy of his return and all records which support the return for at least three years following the time fixed by law for its filing; and (3) that his receipt of a refund, based on the calculations in the tax return, does not preclude audit of that return at a later time. This recommendation could be fulfilled, for example, by presenting such information prominently in the Commissioner's annual message or elsewhere in the instruction materials accompanying the forms mailed to taxpayers.

(g) *Measurement and Promotion of Voluntary Compliance.* The Internal Revenue Service should seek funds from the Congress to undertake studies to evaluate the effectiveness of methods to measure and promote voluntary compliance with the tax laws of the United States. Such inquiries should include consideration of return selection methods, audit procedures, collection procedures, programs for the education of taxpayers, and taxpayer assistance services.

(h) *Analysis of Recovery Experience.* The Internal Revenue Service should periodically publish a comparative study, for each taxpayer class, of a representative sample of District and Appellate Conference settlements involving the most commonly controverted issues. The study should include comparison and analysis of the recovery ratio (i.e., the ratio of the amount of deficiency agreed upon by the parties to the amount of deficiency originally recommended by the examining officer), with reference to the factors of (1) amounts of tax involved, (2) whether or not the taxpayers were represented, and (3) patterns of geographic variation.

3. Section 305.75-6 is added to Part 305 to read as follows:

§ 305.75-6. Internal Revenue Service Procedures: Collection of Delinquent Taxes (Recommendation No. 76-6).

(a) *Notices Mailed to Delinquent Taxpayers.* The Internal Revenue Service

should revise its methods of notifying taxpayers of the application of forcible collection powers to collect delinquent accounts.

(1) The Service should experiment with sending its Final Notice Before Seizure by certified mail, return receipt requested, before forcible collection action is initiated.

(2) The Final Notice Before Seizure should be revised to indicate that forcible action may be taken at any time after the expiration of ten days from date of the Notice and to emphasize that such action may thereafter be taken without further notice to the taxpayer.

(3) If no levy or seizure action is initiated after an unusually long interval, such as 120 days, after the date of a Final Notice Before Seizure, the District Office should undertake additional actual notification to the taxpayer that levy or seizure will follow promptly, but not sooner than ten days thereafter. Such additional notification should be attempted by telephone or personal contact, and if no contact is established, by certified mail, return receipt requested.

(b) *Income Tax Liens.* In connection with the recording or filing of income tax liens, the Internal Revenue Service should establish and promulgate in the Internal Revenue Manual:

(1) Factors to be considered in determining whether such liens are to be recorded or filed;

(2) Procedures to ensure, to the extent feasible, that the taxpayer is notified of the recording or filing of such lien against his property; and

(3) Procedures to ensure, without the necessity of application by the taxpayer, that upon payment or satisfaction of a delinquent account, a release of such lien is properly recorded or filed in all places where notice of such lien was recorded or filed.

(c) *Levies on Liquid Assets.* (1) The Internal Revenue Service should establish and promulgate in the Internal Revenue Manual affirmative and specific guidelines for resort to levies on liquid assets (in addition to specifying, as it now does, when these powers should not be used) in order to achieve fair and even-handed application thereof. In formulating such guidelines, the Service should by illustration seek to specify the circumstances in which the debtor is provided a "reasonable" opportunity to pay the tax and which constitute "judicious" use of the levy powers.

(2) In order to reduce the possibility of undue or unanticipated hardship to delinquent taxpayers against whom salary or wage levies are imposed, legislation should be enacted to exempt from levy a minimum amount of the taxpayer's salary or wages, such amount to be based in part upon the number of dependents of the taxpayer. Such legislation should also provide that a levy on salary or wages of a taxpayer be continuous from the date the levy is first made until the tax liability with respect to which it is made is satisfied or becomes unenforceable because of the lapse of time.

(d) *Seizures and Sales of Non-Liquid Assets.* (1) The Internal Revenue Service should establish the following procedures to ensure that the taxpayer is injured as little as possible by the seizure and sale of non-liquid assets, consistent with collection of the delinquent taxes:

(i) Withdrawal from Revenue Officers and delegation only to Group Managers of the authority to determine that seizure will be imposed;

(ii) Determination by the Group Manager, prior to imposition of the seizure, that the proceeds of sale of the seized assets will exceed the anticipated expenses of sale;

(iii) Return to the taxpayer of any item of property as to which a determination can reasonably be made that the minimum sale price is unlikely to exceed the Service's expenses of seizure and sale.

(2) To provide qualitative information concerning seizures and sales of non-liquid assets, the Internal Revenue Service should from time to time collect, tabulate, and analyze data on:

(i) The number of seizures, as it now does;

(ii) The number of sales;

(iii) The gross proceeds from sales;

(iv) The funds applied in reduction of tax liabilities;

(v) Personnel and other overhead costs incurred by the Service in the seizure and sale proceedings;

(vi) The number of releases back to the taxpayer of seized property; and

(vii) The reasons for such releases.

(e) *Undue Hardship.* The Internal Revenue Service should continue to exempt from levy or seizure those taxpayers to whom undue hardship would result from such activity. However, the Service should establish and promulgate more specific criteria and procedures to make the application of the undue hardship principle more uniform. These should include:

(1) A listing of criteria for exempting funds sufficient for the purchase of common necessaries of life for the taxpayer and his dependents, including food, housing, transportation, and clothing;

(2) Clear advice as to what information and documentation is needed for the Service to make the determination of hardship; and

(3) Sufficient time and opportunity for the taxpayer to obtain the information and documentation necessary to complete and support the financial statement on which the determination will be based.

(f) *Installment Payments of Delinquent Taxes.* The Internal Revenue Service should establish and promulgate in the Internal Revenue Manual procedures to enable taxpayers to pay their delinquent accounts in installments in appropriate circumstances. The Service should endeavor to ensure that the monthly sum of installment payments required of the taxpayer towards liquidation of his delinquent account does not exceed the amount of the taxpayer's monthly take-home income less his monthly expenses for common necessaries of life. The Service should keep line personnel advised of the minimum acceptable installment in order that the costs to the Service from processing any such payments do not exceed the sum of any such payment. No payment agreement should be rejected solely because of the length of time it would require to satisfy the debt; however, waiver or extension of the statute of limitations for collection should be obtained if the time needed for payment will extend beyond the limitations period, and the agreement should be subject to at least annual review and adjustment to reflect changes, if any, in the taxpayer's ability to liquidate the unpaid delinquency. Finally, the Service should discontinue any reference to agreements for payment of delinquent taxes in periodic installments as "part payment" agreements because such terminology fosters the mistaken impression that a portion of the tax debt has been forgiven. The idiom of "part payment agreement" should be supplanted with such terms as "installment agreement," "periodic payments," or others which do not connote that less than the total delinquency is to be paid.

(g) *Jeopardy and Termination Assessments.* (1) In order to prevent abuse of the authority to make jeopardy and termination assessments, the Internal Revenue Service should establish and promulgate procedures that will enable the taxpayer to contest the necessity and amount of such assessments at the earliest possible time. The taxpayer should be furnished as soon as practicable after the assessment is made a full written explanation of the facts upon which (i) the District Director found that collection of a tax deficiency is or has been jeopardized, and (ii) the computation of tax was based (including the method of such computation). An informal conference should be granted at the taxpayer's request to resolve any dispute over the finding of jeopardy and computation. The investigating agents who developed the facts upon which the finding of jeopardy and the computation of tax was based, and their supervisors, should ordinarily be in attendance at such a conference.

(2) In order to restrict the imposition of jeopardy and termination assessments to situations in which the eventual collection of tax is jeopardized, the Internal Revenue Service should remove the implication, now present in the Internal Revenue Manual, that jeopardy or termination assessments are justified merely by the existence of a "prima facie case" and make clear in the Manual that no such assessment may be imposed unless a determination has been made by the District Director, based on substantial evidence, that a tax is due and the eventual collection of the tax is jeopardized.

(3) The Internal Revenue Service should establish and promulgate in the Internal Revenue Manual procedures which will ensure immediate release to the taxpayer of any or all property distrained in jeopardy and termination pro-

ceedings in return for an adequate surety in the amount of the net proceeds expected to be realized on a forced sale of any or all such property the release of which is sought.

(h) *Employer Tax Payments.* To permit more prompt contact with defaulting business taxpayers, the Internal Revenue Service should speed its crediting of employer payments of withheld employee income and Social Security taxes by requiring commercial banks to forward records of such payments directly to an Internal Revenue Service Center, rather than to a Federal Reserve Bank.

(i) *Education of New Employers.* The Internal Revenue Service should endeavor to give officers of new businesses written advice of their possible personal liability for payment of withheld employee taxes. This advice could be communicated individually to all such officers, whose names and addresses the Service could require to be submitted as part of the application for an employer identification number. Alternatively, the Service could send multiple copies of the advice letter to the new business entity, with the request that the copies be distributed to all officers. In either case the letter should invite the officer to discuss any questions with a Taxpayer Service Representative. When officers do respond and it is determined that there is a responsibility to pay and file returns of certain taxes, a follow-up contact should be made to ascertain that the responsibilities are understood and followed. Moreover, the Service should work with other Federal agencies to assure that the officers of new employer organizations being established with Federal financial assistance will become familiar with their responsibilities before they commence operations. Similar efforts, with the cooperation of parent organizations, should be made to contact and instruct franchisees and licensees of chain stores, food outlets, oil companies, and the like.

4. Section 305.75-7 is added to Part 305 to read as follows:

§ 305.75-7 Internal Revenue Service Procedures: Civil Penalties (Recommendation No. 75-7).

(a) *Analysis of Effectiveness of Civil Penalties.* The Internal Revenue Service should annually compile and publish, for each taxpayer class and by year of tax returns, statistical data, together with analytic discussions, pertaining to the assessment and collection of civil penalties for underpayment of tax due to each of the different types of conduct now or hereafter provided as the basis for such penalties. Such data should be compiled for the purpose of evaluating the significance, effectiveness, and fairness of these civil penalties and should include: (1) the number and dollar amounts of penalties assessed, (2) the number and dollar amounts of penalties voluntarily paid by taxpayers, (3) the number and dollar amounts of penalties contested by taxpayers, (4) the number and dollar amounts of penalties sustained by court action and collected. In addition to making such data and analyses available to the public and to the Congress, the Service should consider and determine whether additional data and analyses should be compiled and prepared pertaining to the significance, effectiveness, and fairness of these and other civil penalties from the standpoint of the administration of the tax laws by the Service, enforcement of the laws by the courts, and compliance with the laws by taxpayers.

(b) *Structure and Application of Civil Penalties for Underpayment of Tax.* Legislation should be enacted which would restructure and alter application of the civil penalties for underpayment of tax, established in Section 6653 of the Internal Revenue Code, as follows:

(1) (i) The penalty for "negligence" should be retained. Negligence should be defined as failure to exercise reasonable care in keeping records or in preparing the tax return.

(ii) A taxpayer against whom this penalty is assessed should have the burden of proof to establish by a preponderance of the evidence that his conduct was not negligent.

(2) The present five percent penalty for "intentional disregard of rules and regulations (but without intention to defraud)" should be repealed.

(3) (i) A new penalty should be established for "reckless or intentional conduct (but without willful attempt to evade payment of tax)." The rate of this penalty should be fixed at a level near the midpoint (say 25%) between the rates of the penalties for negligence (now 5%) and for willful atempts to evade payment of tax (now 50%). Reckless conduct should be defined as meaning that in keeping records or preparing the tax return, the taxpayer has consciously disregarded a substantial risk that an underpayment would occur; provided, that it is not intended that the penalty to be established pursuant to this paragraph would apply to an underpayment resulting from a bona fide disagreement with the Internal Revenue Service as to the interpretation of the tax law or its application to facts disclosed on a tax return. Intentional conduct should be defined as meaning that in keeping records or preparing the tax return, the taxpayer knew that an underpayment would occur or was substantially certain to occur.

(ii) A taxpayer against whom this penalty is assessed should have the burden of proof to establish by a preponderance of the evidence that his conduct was not reckless or intentional. In any case where the taxpayer succeeds in persuading the court that his conduct was not reckless or intentional, the court should be empowered to impose the lesser penalty for negligence, even though it had not theretofore been assessed by the Internal Revenue Service.

(4) (i) The present 50 percent penalty for "fraud" should be restated to apply only to "willful attempt to evade payment of tax," which should be understood to have the same meaning as under Section 7201 of the Internal Revenue Code.

(ii) The Internal Revenue Service should have the burden of proof to establish by clear and convincing evidence that an underpayment is attributable to the taxpayer's willful attempt to evade payment of tax. If the Service succeeds in persuading the court that a part of the underpayment is so attributable, the burden of proof should shift to the taxpayer to establish by a preponderance of the evidence that the remainder of the underpayment is not so attributable. In any case where the court is not persuaded that the taxpayer engaged in a willful attempt to evade payment of tax, the court should be empowered to impose the penalty for reckless or intentional conduct (proposed in c. above) or the penalty for negligence, provided that, before the court may impose either of such lesser penalties, the Service shall have so proposed and the taxpayer shall have had the opportunity to present evidence to establish that he is not liable therefor.

(5) In imposing the penalties for underpayment of taxes described above, each penalty rate should be applied only to the portion of the total underpayment that is attributable to conduct liable for penalty at such rate.

(c) *Publicity of Civil Penalty for Underpayment of Tax Because of Fraud.* The Internal Revenue Service should seek statutory instruction with respect to publicizing the imposition of the 50 percent civil penalty for underpayment of tax because of fraud (or, as recommended in paragraph (b) (4) of this section, restated as "willful attempt to evade payment of tax").[1]

(d) *Structure and Application of Civil Penalties for Failure to File Tax Return or to Pay Tax.* (1) Legislation should be enacted which would restructure and alter application of the civil penalties for failure to file a tax return or to pay a tax, established in Section 6651 of the Internal Revenue Code, as follows:

(i) The phrase "and not due to willful neglect" should be deleted from paragraphs (1), (2), and (3) of subsection 6651(a).

(ii) (A) The monthly rate of the penalty for failure to file a return, established in subsection 6651(a)(1), should be modified so as to extend the time period of lateness in filing a return which must elapse before the rate of penalty to be applied reaches the present aggregate maximum rate of 25 percent. The table below sets forth three options for so modifying the monthly penalty rate, compared with present law.

	Penalty for first month (percent)	Penalty for each succeeding month (percent)	Period of lateness to reach maximum penalty (months)
Present law	5	5	5
Option 1	5	2	11
Option 2	5	1¼	16
Option 3	5	1	21

[1] Issuance of such publicity should be carried out in a manner consistent with Conference Recommendation 73-1, Adverse Agency Publicity.

The penalty for failure to pay tax established by subsection 6651(a)(2) should be imposed in addition to, and not offset against, the foregoing penalty.

(B) The monthly rate of the penalty for each month after the first month of failure to file a return should be prorated on a semi-monthly basis.

(2) The Internal Revenue Service should set forth, in the regulations under Section 6651 of the Internal Revenue Code, or in other form readily available to the public, the listing of acceptable reasons for late filing of a tax return that are set forth in the Internal Revenue Manual.

(e) *Procedures for Appealing Civil Penalties for Failure to File Tax Return or to Pay Tax.* With regard to civil penalties for failure to file a tax return or to pay tax established in Section 6651 of the Internal Revenue Code, taxpayers should be accorded administrative settlement procedures and the right to Tax Court review similar to those accorded with regard to civil penalties for underpayment of tax established in Section 6653 of the Code.

5. Section 305.75–8 is added to Part 305 to read as follows:

§ 305.75–8 Internal Revenue Service Procedures: Tax Return Confidentiality (Recommendation No. 75–8).

(a) *Purpose and Scope of Application of Recommendations.* (1) Under existing law, tax returns are disclosed by the Internal Revenue Service for many purposes to many governmental agencies outside the Internal Revenue Service. The purpose of these recommendations is substantially to narrow the authority of the Service to disclose to other governmental agencies tax returns pertaining to the tax liability of individuals and decedents, including principally individual income tax returns (Forms 1040 and 1040A), estate tax returns (Form 706), gift tax returns (Form 709), and income tax returns filed on behalf of estates or trusts (Form 1041). Tax returns of business entities such as partnerships and corporations, even though they may have bearing on the tax liability of individuals, are outside the scope of these recommendations. The omission of such other tax returns from the scope of application of these recommendations is intended to reflect neither approval nor disapproval of existing law or of the disclosure practices of the Internal Revenue Service thereunder, with respect to such other tax returns. But Congress, in addressing the subject of tax return confidentiality should make provision to govern the confidentiality and conditions of disclosure of all categories of tax returns, including categories that are outside the scope of these recommendations.

(2) As used in these recommendations, the term "tax return" means (i) the return itself together with any schedule, list, and other written statement filed by or on behalf of the taxpayer with the Internal Revenue Service which is designed to be supplemental to or become a part of the return, and (ii) other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to the items included in paragraph (a)(2)(i) of this section.[1]

(b) *General.* Legislation should be enacted which would permit the disclosure of tax returns by the Internal Revenue Service only as authorized by express statute designating the persons to whom and the purposes for which disclosure may be made, the procedures governing such disclosure, and limitations on use or redisclosure that shall govern such disclosure.

(c) *Availability of Tax Returns to Executive Departments and Agencies.* (1) Legislation should be enacted which would permit the disclosure by the Internal Revenue Service of tax returns to any Executive department or agency of the Federal government in the following circumstances:

(i) To any office of the Treasury Department for use that is necessary to its exercise of responsibility for the administration of the tax laws, the formulation of tax policy, or the preparation of economic analyses.

(ii) To a United States Attorney, or to an attorney of the Department of Justice, for use in preparing for and conducting civil or criminal litigation that is related to administration of the tax laws, provided, that any such disclosure shall be limited to (A) the tax return of the taxpayer who is a party to the litigation, (B) the tax return of an alleged co-conspirator of such party, and (C) the tax return of any other taxpayer which contains information that is pertinent to an issue in the litigation, and provided further, that when any such disclosure is to be made in response to a request initiated by any such attorney, the request shall be in writing and state with specificity the reasons for seeking the tax return.

(iii) To the Bureau of the Census and to the Bureau of Economic Analysis of the Department of Commerce for use that is necessary to their respective statistical collection and publication responsibilities.

(iv) To the Social Security Administration for use that is necessary to its responsibility for administering the Social Security Act.

(v) To the Department of Labor and to the Pension Benefit Guaranty Corporation for use that is necessary to their respective responsibilities for administering the Employee Retirement Income Security Act.

Particularly, the Internal Revenue Service should not be permitted to disclose tax return information to any Executive department or agency of the Federal government for use in any way relating to an individual's service as a juror. [The Conference defers consideration of whether, and under what circumstances, tax returns should be disclosed to Executive departments or agencies of the Federal government for use in litigation or investigations not related to the administration of the tax laws.]

(2) Any disclosure in a form that allows identification of the taxpayer should be made only if the agency or department to which disclosure is made follows procedures based on legally enforceable regulations no less restrictive than those of the Internal Revenue Service which are designed to assure that the tax return will not be used or redisclosed for any purpose other than that for which such disclosure is made.

(d) *Availability of Tax Returns to the Executive Office of the President.* (1) Legislation should be enacted which would permit the disclosure of tax returns by the Internal Revenue Service to the Executive Office of the President, only in accordance with the following limitations:

(i) The President shall personally sign a written request for such disclosure which (A) specifies the taxpayer's tax return to be disclosed; (B) designates by name a responsible individual to whom disclosure is to be made; (C) states with specificity the reasons for seeking the tax return and the uses to which it will be put; and (D) states that the tax return requested will not be reproduced and will not be used or redisclosed for any use other than that for which disclosure is requested.

(ii) The requested tax return shall be furnished by the Internal Revenue Service only in written form and only to the President or to an individual designated in the request.

(iii) The written material furnished by the Internal Revenue Service shall be returned to the Service after the use for which it was requested has been completed.

(2) The Internal Revenue Service should maintain permanent records of all disclosures of tax returns to the Executive Office of the President, including copies of Presidential requests, the dates and reasons therefor, the individuals to whom disclosure is made, and the dates when materials furnished are returned to the Service. Based on such records, the Internal Revenue Service should prepare and submit an annual report to the committees of the Congress which are charged with responsibility for oversight of the administrative procedures of the Service, of the names of all taxpayers about whom information was disclosed, the reasons for which each disclosure was requested, and the names of all individuals to whom such disclosures was made.

(e) *Availability of Tax Returns to Committees of Congress.* The existing statutory authority (Section 6103(d) of the Internal Revenue Code) for disclosure of tax returns to the House Committee on Ways and Means, the Senate

[1] This definition is taken from Treasury Regulation § 301.6103(a)-1(3)(i). In considering any legislation in this area, Congress should consider the adequacy of this definition, since some technical problems may exist under the present regulation.

Committee on Finance, and the Joint Committee on Internal Revenue Taxation should be continued. Disclosure of tax returns by the Internal Revenue Service to any other committee of the House or Senate, or joint committee of the Congress, should only be in accordance with specific authorization for such disclosure by a resolution of the House or Senate or, in the case of a joint committee, by a concurrent resolution.

(f) *Availability of Tax Returns to States.* (1) Legislation should be enacted which would amend Section 6103(b) of the Internal Revenue Code by providing the following additional limitations on the right of any State official, body, or commission to inspect tax returns:

(i) The State shall have enacted a statute, which the Commissioner of Internal Revenue has determined to be substantially similar to paragraph (2) of Section 7213 of the Internal Revenue Code, making it a crime for any officer, employee, or agent of the State, or of any political subdivision thereof, to disclose any information acquired by him as a consequence of a disclosure made by the Internal Revenue Service pursuant to Section 6103(b) of the Internal Revenue Code.

(ii) The State shall have entered into, and shall fully comply with, an agreement with the Internal Revenue Service by which the State is obligated to adopt legally enforceable regulations and procedures to safeguard the confidentiality of tax returns which are determined by the Internal Revenue Service to provide satisfactory assurance that (A) information disclosed by the Service to the State, pursuant to Section 6103(b) of the Internal Revenue Code, and (B) information, submitted by a taxpayer to the State or local tax authorities, which is the same as or substantially similar to that compiled for submission with the taxpayer's federal income tax return, will be used or disclosed only within the limitations therein provided.

(2) The Internal Revenue Service should adopt regulations which shall contain provisions to accomplish the following:

(i) Establish procedures whereby (A) the Service will make the determination that a State has enacted a statute that is substantially similar to paragraph (2) of Section 7213 of the Internal Revenue Code, and (B) the Service will monitor the State's enforcement of such statute;

(ii) Establish criteria that will be applied by the Service in making determinations regarding the sufficiency of State regulations and procedures designed to limit use and redisclosure of information to be disclosed pursuant to Section 6103(b) of the Internal Revenue Code;

(iii) Establish criteria that will be applied by the Service in acting upon requests for disclosure of information pursuant to Section 6103(b) of the Internal Revenue Code; and

(iv) Establish procedures whereby the Service will audit and enforce the performance by the States of their obligations provided in agreements entered into as a condition of obtaining disclosure of information pursuant to Section 6103(b) of the Internal Revenue Code, including a procedure for suspending disclosure of information to a State under Section 6103(b) whenever the Service determines that the State has failed to perform any of its obligations provided in such agreement.

(g) *Requisition of Tax Returns by Service Personnel.* The Internal Revenue Service should strengthen its procedures designed to eliminate unnecessary inspection of tax returns by Service employees. Such procedures should provide for (1) periodic monitoring by Service management of the requisitioning of tax returns by Service employees, (2) preparation and maintenance of statistical records designed to reveal patterns of frequency in, and of reasons for, the requisitioning of tax returns by Service employees, and (3) preservation of the documents employed by Service employees to requisition tax returns by incorporating each such document in the permanent file of the return requisitioned thereby.

(h) *Notice to the Public About Tax Return Disclosures.* The Internal Revenue Service should inform each taxpayer, by means of a concise statement in the tax return or other appropriate place, of the disclosure, for uses unrelated to the administration of Federal tax laws, that may be made of information supplied by the taxpayer in the return. Such statement should include reference to a public document, which should be prepared and disseminated by the Service, which identifies the governmental agencies and other persons to which disclosures of tax returns are made and the purposes for such disclosures, and which fully describes the procedures followed by the Service with respect to the disclosure of tax returns.[2]

6. Section 305.75-9 is added to Part 305 to read as follows:

§ 305.75-9 Internal Revenue Service Procedures: Taxpayer Services and Complaints (Recommendation No. 75-9).

(a) *Separate Accounting for Taxpayer Service Functions.* The Internal Revenue Service should, on a basis consistent from year to year, compile data on all personnel and funds allocated to and utilized in the performance of functions by its Taxpayer Service Division. Such data should be broken down, perhaps on the basis of statistical sampling, for each of the major types of taxpayer service provided, with attention to at least the following functions:

(1) Responding to individual inquiries and requests for assistance regarding administrative and operating procedures of the Service which have an impact on particular taxpayers;

(2) Answering individual inquiries for tax law advice and providing assistance in tax return preparation; and

(3) General education of members of the public about the tax laws, their tax-return-filing and tax-payment responsibilities, and the administrative and operating procedures of the Service.

(b) *Taxpayer Services.* The Internal Revenue Service should consider establishing a procedure whereby taxpayer inquiries and requests for assistance can be promptly screened and referred for response to Service personnel selected on the basis of their competence and authority to respond to particular categories of inquiry or assistance. Such a screening and referral system might be facilitated by:

(1) Developing statistical profiles of the categories of inquiry and requests for assistance that are most frequently made;

(2) Specifically training and assigning some personnel to review taxpayer inquiries and requests for assistance and to make referral of them to those Service personnel whose competence and authority will assure prompt and effective responses;

(3) Specifically training some personnel as specialists in the administrative and operating procedures of the Internal Revenue Service, with emphasis on the operation of Service Centers, to whom referral of inquiries and requests for assistance will be made;

(4) Continuing to make available experienced and knowledgeable Audit Division personnel to whom referrals of inquiries and requests for assistance may be made, especially during tax-return-filing season; and

(5) Continuing to maintain high quality staffing of taxpayer contact units in the Service Centers until some workable alternative thereto is developed.

(c) *Tax Law Advice to Taxpayers.* The Internal Revenue Service should adopt procedures designed to assure that any taxpayer who inquires for tax law advice from any employee of the IRS Taxpayer Service Division will be informed that: (1) the answer to his inquiry is based on the facts understood by the employee and that such understanding may not be identical to, nor as comprehensive as, the taxpayer's; (2) the Service is not bound by the advice given by the employee and may assert a different position at some later date, for example, if the taxpayer's return is audited; (3) the advice given by the employee is based on the Service's interpretation of the tax laws and, if such be the case with respect to a particular inquiry, that there is authority for a different interpretation as to which the taxpayer should seek his own tax law advice; and (4) the taxpayer should preserve any records pertaining to the subject matter of the inquiry for at least three years following the time fixed by law for filing the tax return to which the inquiry pertains. The substance of the foregoing information should be incorporated into all written materials issued by the Service describing the availability of taxpayer services or responding to inquiries for tax law advice. The substance of such information also should be mentioned in oral responses to inquiries for

[2] This recommendation might be implemented by amplification of the Privacy Act notification provided with the 1975 income tax returns.

tax law advice, to the degree appropriate to the nature and circumstances of the contact.

(d) (1) *Taxpayer Complaint Response Procedures.* The Internal Revenue Service should establish regular procedures whereby any taxpayer can obtain a prompt and impartial response to any legitimate complaint about the conduct of any individual IRS employee. These complaint response procedures should be organized and operated so as to provide for the receipt and processing of such complaints by Service personnel who have thorough familiarity with the authority, organization, and administrative and operating procedures of the Service.

(2) The recommended complaint response procedures should be well publicized and easily accessible to taxpayers through all IRS personnel, however organized and wherever situated, whose responsibilities include the provision of assistance, advice, or other services to taxpayers (for example, Taxpayer Service Representatives and personnel of Service Center Taxpayer Contact Units).

(3) The recommended complaint response procedures should be designed and operated so as to provide information that will enable the line management of the Service systematically to:

(i) Identify the causes of all legitimate complaints about the conduct of individual IRS employees;

(ii) Assess the effectiveness of the complaint response procedures from the standpoint of taxpayers; and

(iii) Determine what changes, consistent with the Service's duty to administer the internal revenue laws, may be necessary in the training, supervision, or assignment of Service personnel to eliminate causes of legitimate complaints about the conduct of individual IRS employees.

7. Section 305.75-10 is added to Part 305 to read as follows:

§ 305.75-10 Internal Revenue Service Procedures: The IRS Summons Power (Recommendation No. 75-10).

(a) *Information on the Summons.* The Internal Revenue Service should revise its Summons form (Form 2039) to delete extraneous language and references to particular statutes, regulations, or fact situations, and to include, preferably on its face, and in a prominent position and type style:

(1) A brief and specific description of administrative procedures available to the summoned party for raising objections to the summons or to questions propounded at the appearance; and

(2) A statement that if the summoned party fails to comply with the summons or fails to answer questions propounded, the Service may seek a court order to compel compliance, and that where the summoned party fails to appear or otherwise to comply with the summons willfully and without legal excuse, he may be subject to contempt proceedings or criminal prosecution.

(b) *Notification to Taxpayer of Summons to Third Parties.* At the time a summons is served on a third party requesting testimony or production of documents, or as soon as feasible thereafter, the Internal Revenue Service should transmit a copy of such summons to the person to whom such testimony or documents relate.

(c) *Management Monitoring of Use of Summons.* To assure better oversight by its management of the use of the summons by its officers and employees, the Internal Revenue Service should prepare and maintain statistics and analyses for each taxpayer class, to the extent possible, comprising the following data:

(1) Number of summonses issued;

(2) Classifications of employees issuing summonses;

(3) Number of summonses with which there is voluntary compliance;

(4) Number of summonses with which there is not voluntary compliance and for which it is decided not to seek judicial enforcement, together with the reasons for such decisions; and

(5) Number of summonses with which there is not voluntary compliance and for which it is decided to seek enforcement, together with the reasons for such decisions, whether judicial enforcement is granted or denied, and the reasons for denial of enforcement.

RICHARD K. BERG,
Executive Secretary.

JANUARY 6, 1976.

[FR Doc.76-641 Filed 1-9-76;8:45 am]

federal register

TUESDAY, JANUARY 27, 1976

PART III:

FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION CAMPAIGN ACT OF 1971

Opinion of Counsel

FEDERAL ELECTION COMMISSION

[Notice 1976-12]

OPINION OF COUNSEL

The Federal Election Commission announces the publication today of Opinion of Counsel 1975-14. This is in response to inquiries by a party who does not have standing under the Federal Election Campaign Act of 1971, as amended ("the Act"), to request an Advisory Opinion, but whose inquiries are so significant as to warrant the issuance of an Opinion of Counsel. It should be emphasized that this opinion reflects only the current view of the Office of the General Counsel with respect to the issues in question and that there is no presumption of compliance (see 2 U.S.C. 437f(b)) in connection with this opinion. The Commission has noted this opinion without objection.

This opinion is published in order to assure the widest publication and dissemination of the views of the Commission's Office of the General Counsel. It is the view of the Commission that any person who has a further question as to whether a particular state election statute has been preempted by the Act, should directly request guidance from the Secretary of State or other appropriate election official of that state. Each Secretary of State or other appropriate election official is requested to consider all preemption inquiries in light of the legislative history, rules, holdings, and statutory appendix which appear in OC 1975-14. If a Secretary of State, other appropriate election official, or any other person desires additional assistance on a matter concerning the preemption of State election law, he or she may write the Office of the General Counsel, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463; or telephone (202) 382-3153.

Mr. W. NORMAN GLEASON,
Director, Massachusetts Office of Campaign and Political Finance,
Eight Beacon Street
Boston, Massachusetts 02108.

DEAR MR. GLEASON: This is in response to your request for an advisory opinion as to whether the provisions of Chapter 55 of the Massachusetts General Laws (hereinafter "Chapter 55") were preempted by he Federal Election Campaign Act of 1971, as amended, and the applicable parts of Title 18 of the United States Code (hereinafter "the Act"); and whether the Federal requirement that a duplicate of the Federal reports be filed with the Secretary of the Commonwealth, fully discharges the reporting requirements for Federal candidates and their committees. I apologize for the delay in supplying these answers, which has resulted in part from the significance and sensitivity of the issues mentioned in your correspondence. The Commission continues to labor under a serious backlog of similarly important inquiries, but we are making every effort to meet the public's need for information as expeditiously as possible.

This response to your request is in the form of an opinion of counsel since the Massachusetts Office of Campaign and Political Finance does not have standing to receive an advisory opinion under 2 U.S.C. 437f.

A. *General Federal Authority to preempt State Law.* You first ask whether provisions of Chapter 55, under which candidates for Federal office and committees organized in their behalf are regulated as to their reporting requirements, committee organizational requirements, and contribution and expenditure limits, have been preempted by the Act. It is provided in the Constitution of the United States in Article VI, clause 2, that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." This clause requires that where there is a clear collision between State and Federal law, or a conflict between Federal law and the application of an otherwise valid State enactment, Federal law will prevail. "Hamm v. City of Rock Hill," 379 U.S. 306, 311-312 (1964). However, it is the established policy of both State and Federal governments to treat possible conflicts between their powers in such a manner as to produce as little conflict and friction as possible. "Bute v. People of State of Illinois," 333 U.S.C. 640, 658-569 (1948). Thus, it will not be presumed that a Federal statute was intended to supersede the exercise of a given power by a State unless there is a clear manifestation of intention to do so, since the exercise of Federal supremacy will not lightly be presumed. "Schwartz v. State of Texas", 344 U.S.C. 199, 202-203 (1952). To determine whether a State law violates the supremacy clause of the Constitution because of the existence of a Federal law in the same field involves a determination of the purpose of the respective laws, whether such purposes are in conflict, and whether the Federal authority intended to preempt the field. "Associated Gen. Contractors of Mass., Inc. v. Altshuler," 361 F. Supp. 1293, 1300 (Mass., 1973).[1]

I am well aware that it is primarily the responsibility of the judiciary to determine whether a sufficient conflict exists between a State and Federal statute as to necessitate the exercise of Federal preemption. However, as Chapter 55 provides for its own preemption in certain cases[2] and as you[3] and the Massachusetts Attorney General[4] agree that both the Act and Chapter 55 are intended to provide for disclosure and limitations upon contributions and expenditures in connection with elections, that the Act and Chapter 55 conflict with regard to Federal elections, and that the Federal authority is intended to preempt the field; I believe that it is appropriate for me to render an opinion in this case as your inquiry is in fact solely concerned with which provisions of Chapter 55 are preempted by the Act.

B. *Provisions of Chapter 55 which are preempted by the Act.* In general, reference should be made to 2 U.S.C. 453 which states that:

"[t]he provisions of this Act, and rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office."

The scope of congressional intent with regard to this section is stated in the House Report of the Committee on Conference on the Federal Election Campaign Act Amendments of 1974 (Report No. 93-1438, 93d Cong., 2d Sess., 100-101, 1974), where the Committee states that:

"[i]t is clear that the Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees, but does not affect State laws as to the manner of qualifying as a candidate, or the dates and places of elections."

Similarly, it is provided in the note to 18 U.S.C. 591 (which is derived from section 104 (a) of the Federal Election Campaign Act Amendments of 1974, Pub. L. 93-443, 93d Cong., 2d Sess.) that:

"[t]he provisions of chapter 29 of title 18, United States Code, relating to elections and political activities, supersede and preempt any provision of State law with respect to election to Federal office."

The intent of this provision, as stated in the House Report, *supra*, at 69, is that:

"[t]he provisions of the conference substitute make it clear that the Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights to prohibit false registration, voting fraud, theft of ballots, and similar offenses under State law."[5]

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[1] It may be argued that there is a "pervasive national interest in the selection of candidates for national office * * * [which] is greater than any interest of an individual State," Cousins v. Wigoda, —— U.S. ——, 95 S. Ct. 541, 549 (1975), and thus the summary preemption of any State statute which impinges on Federal elections is authorized in order to prevent the placing of an inordinate burden on the political process. Such a view may have been applied in Katzenbach v. Morgan, 384 U.S. 641, 647 (1966). But see 53 Texas L. Rev. 934, 944 (1975) in which this proposition is declared to be merely overboard dicta.

[2] It is provided in section 4 of Chapter 55 that "[c]andidates for nomination or election to the senate or house of representatives of the United States shall not be subject to the provisions of this chapter insofar as they may conflict with federal law." I note that this section does not provide for Federal preemption of state statutes for candidates for President, Vice President, and delegates to national political party conventions.

[3] Letters from W. Norman Gleason, Director of the Massachusetts Office of Campaign and Political Finance, to Federal Election Commission, May 7, 1975 and August 12, 1975.

[4] Letter from Francis X. Bellotti, Massachusetts Attorney General to W. Norman Gleason, Director of the Massachusetts Office of Campaign and Political Finance, June 23, 1975, on file at the Federal Election Commission.

The Attorney General states on page 2 of his letter, in pertinent part:

"* * * I conclude, therefore, that except for those matters referred to in the Conference Report, e.g. voting fraud, the State has no authority to regulate the conduct of Federal campaigns and elections.

"With respect to your second question, I conclude that Federal candidates satisfy the provision of the Federal Election Campaign Act if they file duplicate forms with the Secretary of State, as required by 2 U.S.C. § 439. * * *

[5] The intent of these provisions was further elaborated in the Report of the Committee on House Administration on H.R. 16090 (House Report No. 93-1239, 93d Congress, 2d Sess., 10, 1974) where the Committee states:

"* * * It is the intent of the committee to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated. Under the 1971 Act, provision was made for filing Federal reports with State officials and the supervisory officers were required to cooperate with, and to encourage, State officials to accept Federal reports in satisfaction of State reporting requirements. The provision requiring filing of Federal reports with State officials is retained, but the provision relating to encouraging State officials to accept Federal reports to satisfy State reporting require-

The Conference substitute, which became the enacted version of 2 U.S.C. 453 and section 104(a) of Pub. L. 93-443, is identical to the coverage of the original House amendment. House Report of the Committee on Conference on the Federal Election Campaign Act Amendments of 1974, Report No. 93-1438, 93d Cong., 2d Sess., 69, 100 (1974).

Thus, in light of the scope of Chapter 55 as revised by the 1975 session of the Massachusetts General Court, and the effect of 2 U.S.C. 453 and the note to 18 U.S.C. 591, it is my opinion that 1-10, 18-25, 28-31, 32 in part[6] and 34-42 of Chapter 55[7] conflict with the provisions of the Act and I suggest that you treat these sections as preempted and unenforceable with respect to all candidates for Federal office, or political committees to the extent that such committees' activities relate to Federal candidates and a Federal election. Of course, there are a number of other provisions in Chapter 55 which do not generally relate to elections for Federal office.

C. *Statements filed with State Officials.* You further ask in your letter whether the Federal requirement that a duplicate of the Federal reports be filed with the Secretary of the Commonwealth of Massachusetts, fully discharges the reporting requirements of Federal candidates and committees. Since the Act clearly supersedes and preempts any State reporting requirements (see House Conference Report, supra, at 100-101), Federal candidates and political committees are governed solely by the Act. Thus, the filing of a duplicate report with the Secretary of the Commonwealth does fully discharge the reporting obligations of Federal candidates and committees, regardless of any conflicting or different State statutory provisions. The Act does provide that "[a] copy of each statement required to be filed with the Commission * * * shall be filed with the Secretary of State (or, if there is no office of Secretary of State, the equivalent State officer) of the appropriate State." 2 U.S.C. 439(a). These statements shall be preserved by the Secretary of State and be available for public inspection, and copying. 2 U.S.C. 439 (b). Thus any State agency with a need to examine these reports would have ready access to them.

I hope that my views will be of assistance in your administration of Chapter 55.

This letter is to be regarded as an opinion of counsel which the Commission has noted without objection.

JOHN G. MURPHY, Jr.,
General Counsel.

APPENDIX TO OC 1975-14

As revised by the 1975 session of the Massachusetts General Court (the Massachusetts legislature), Chapter 55 of the Massachusetts General Laws generally provides in:

§ 1 For various definitions of "contribution," "election," "expenditure," "political committee," and that "candidate" be defined to mean any individual who seeks nomination or election to public office;

§ 2 For requirements for the contents of the reports to be kept by a candidate;

§ 3 That a Massachusetts campaign and political finance commission shall administer the provisions of Chapter 55, and establishes its powers and duties;

§ 4 That political committees principally organized and operated in Massachusetts in behalf of candidates for president and vice president, are subject to the provisions of Chapter 55, and allows the director of the Commission to dissolve a political committee organized or operating principally in Massachusetts on behalf of a candidate for president and vice president of the United States, if the candidate does not consent to the formation of such a committee;

§ 5 For the requirements of a statement of organization which is to be filed by a political committee;

§ 6 For restricting the purposes for which political committees may expend campaign money;

§ 7 That no person shall make any expenditures except as provided in Chapter 55, limits the amounts that may be contributed by an individual to a candidate or political committee, and provides a procedure for the payment of services rendered and goods sold;

§ 8 For a prohibition on contributions or expenditures by certain types of corporations for the purposes of influencing the election of any person, the interests of any political party, or the vote on any question submitted to the voters, except when the question materially affects the corporation;

§ 9 That contributions in excess of a certain amount must be made by check;

§ 10 That the origins of contributions may not be distinguished;

§ 11 That the solicitation of money from a candidate for advertising gratuities, donations, tickets, programs and the like, are prohibited;

§ 12 That political committees are prohibited from demanding or soliciting money for nomination papers;

§ 13 That a State or local employee, who is other than an elected officer, is prohibited from soliciting or receiving money for political campaign purposes;

§ 14 That solicitation by appointed officers or employees of contributions in a State or local public building is prohibited;

§ 15 That the giving of money by a State or local official for the promotion of a political object is prohibited;

§ 16 That persons in public service are under no obligation to contribute to a political fundraiser or provide any political service;

§ 17 That the taking of favorable or hostile job action by a State or local officer or employee against a State or local employee because of his making or failing to make a contribution, is prohibited;

§ 18 For the filing of reports of contributions received and expenditures made, and specifies the contents of these reports;

§ 19 That a campaign depository must be designated and appropriately reported by candidates, including candidates for Federal office, and also regulates deposits to and expenditures from the depository;

§ 20 For limits on the amounts that may be expended by a candidate for campaign media expenses, but excludes candidates for U.S. Senate and Congress;

§ 21 For reporting by media agencies as to accounts;

§ 22 For reporting by a corporation which has made a contribution or expended money to influence a voter or question which materially affects the business of the corporation;

§ 23 That agents of a political committee are required to give a detailed accounting to the treasurer of the committee;

§ 24 For the filing location of statements;

§ 25 That the director of the Massachusetts campaign and political financing commission is to retain for a certain time, reports filed in his office;

§ 26 That a city or town clerk is to retain for a certain time, reports filed with them;

§ 27 That the direction of the Massachusetts campaign and political finance commission shall make available appropriate forms to city and town clerks, and the director also shall make available to candidates, political committees, and appropriate clerks a summary of Chapter 55;

§ 28 For inspection by an appropriate public official of the reports filed with the Massachusetts campaign and political financing commission, and notice to delinquent filers;

§ 29 For notification of the Massachusetts attorney general in the case of a failure to file, and also provides for appropriate civil proceedings;

§ 30—That the courts may compel a person to file a report;

§ 31 For immunity of witnesses in cases involving an alleged violation of Chapter 55;

§ 32 For a general description of what constitutes a corrupt practice by a candidate;

§ 33 For a procedure for bringing an election petition if a corrupt practice is believed to have occurred, but excluding candidates for Congress;

§ 34 That Chapter 55 generally applies to all public elections; and

§ 35-42 For inquests in the case of violations of Chapter 55, and for the conduct of the inquests.

Dated: January 21, 1976.

NEIL STAEBLER,
Vice Chairman for the Federal Election Commission.

[FR Doc.76-2332 Filed 1-26-76;8:45 am]

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ments is deleted. Under this legislation, Federal reporting requirements will be the only reporting requirements and copies of the Federal reports must be filed with appropriate State officials. The Committee also feels that there can be no question with respect to preemption of local laws. Since the committee has provided that the Federal law supersede and preempt any law enacted by a State, the Federal law will also supersede and preempt any law enacted by a political subdivision of a State.

"The other preemption provision was added to title I of the bill, relating to amendments to the criminal code. This was done to make it clear that the Federal law is intended to be the sole source of criminal sanctions for offenses involving political activities in connection with Federal elections."

[6] One part of Chapter 55 which I believe has not been preempted by the Act and is specifically applicable to the actions of a candidate for Federal office, is the part of section 32 which reads:

"A candidate shall be deemed to have committed a corrupt practice who commits any of the following offenses: * * *

Any candidate fraudulent and willfully obstructing and delaying a voter, interfering with, hindering or preventing an election officer from performing his duties, forging an endorsement upon, altering, destroying or defacing a ballot tampering with or injurying or attempting to injure any voting machine or ballot box to be used or being used in a primary or election, or preventing or attempting to injure any voting machine or ballot box to be used or being used in a primary or election, or preventing or attempting to prevent the correct operation of such machine or box."

[7] I have not set out the substance of these sections in this letter because you obviously are conversant with them. However, because this letter is available to the public and may be used for guidance in other jurisdictions, I have taken the liberty of attaching an appendix which briefly summarizes all of the provisions of Chapter 55. This attachment also will be available to the public.

federal register

TUESDAY, JANUARY 27, 1976

PART IV:

COMMODITY FUTURES TRADING COMMISSION

Reparation Proceedings

Procedure and Practice

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 12—RULES RELATING TO REPARATION PROCEEDINGS

Procedure and Practice

On December 1, 1975, the Commodity Futures Trading Commission published in the FEDERAL REGISTER, 40 FR 55666, notice that it was considering adopting rules to implement the reparation provisions of section 14 of the Commodity Exchange Act, 7 U.S.C. 18, which becomes effective on January 23, 1976. Although the Commission was not required by the Administrative Procedure Act to seek comment from the public prior to the adoption of these rules, which relate to agency procedure and practice (see 5 U.S.C. 553(b)), the Commission considered it desirable to afford an opportunity for public comment in order to assure the fullest practicable public participation in its decision-making processes since the procedure under section 14 will so directly affect the interests of members of the public.

The December 1, 1975, notice provided for comments to be submitted to the Commission by December 19, 1975, although comments received after that date were fully evaluated. Several comments received by the Commission stated that the short time frame given for comment did not allow for adequate analysis and review in order to meaningfully comment on the proposed rules. The Commission regrets that the period of time provided for public comments on the proposed rules was so limited. This was necessitated, however, by the fact that section 14 becomes effective on January 23, 1976, and that rules to implement section 14 must be adopted by the Commission by that date. The Commission would, however, encourage all interested persons to continue to submit comments and suggestions on these rules. The Commission will fully evaluate all such comments received and will propose amendments to the rules if the desirability of amendments should be demonstrated.

In the December 1, 1975 notice, the Commission invited interested persons to participate in the rule-making process by providing written submissions to the Commission. Although the Commission has determined to adopt rules implementing the reparation provisions of section 14 in substantially the form proposed, the Commission has, upon further consideration, determined that certain additions, amendments and modifications to the rules are necessary and is adopting rules in the form set forth below in lieu of the form proposed. Most of the modifications are structural in nature and were made to conform these rules to the rules of practice (Part 10) which were published in the FEDERAL REGISTER, 40 FR 2508, on January 16, 1976. The most significant of the amendments and additions relate to counterclaims (§ 12.23(b)(2)), consolidation (§ 12.72), and the discovery provisions which were reserved in the proposed rules (§§ 12.62 through 12.66 and 12.92). The amendments, additions and modifications are more fully discussed below.

The rules as set forth below incorporate, either textually or by reference, various sections of the rules of practice that the Commission has adopted, and the rules with respect to appearance and practice of attorneys and other professionals before the Commission that the Commission is considering for adoption.[1]

The rules establish procedures for persons with complaints against certain persons registered under sections 4d; 4e, 4k or 4m of the Act as floor brokers, futures commission merchants, commodity trading advisors, commodity pool operators, and persons associated with a futures commission merchant or agents thereof, to get just, speedy and inexpensive adjudication of their claims. The rules are designed to protect fully the rights of all interested parties. It is the intention of the Commission in these rules to eliminate all unnecessary formalities in the process of reaching settlement of the claims; no party to a reparation proceeding should be prejudiced by a technical and inadvertent violation of these rules which does not prejudice the interest of any other party. These reparation rules provide the procedures by which a claimant may pursue one of the remedies the law will permit for the recovery of claims. The other available remedies are arbitration and the filing of a lawsuit in an appropriate state or federal court.

With respect to the various remedies available to a claimant, the Commission received a suggestion that the rules should contain a provision prohibiting a complainant from using both the arbitration and reparation proceedings on the same cause of action. The Commission is of the opinion that the utilization of either an arbitration proceeding or civil court litigation is a waiver of the remedies available under the reparation procedures if the arbitration proceeding or court litigation is pursued to a final decision on the merits. In order to prevent the utilization of the reparation procedures while an arbitration proceeding or civil court litigation is pending, based on the same facts set forth and against the same party or parties named in a complaint, the Commission has determined to require the complainant to set forth in the complaint any pending arbitration proceeding or court litigation based on the facts set forth and against the same party or parties named in the complaint. (§ 12.21(a)(7)). Should such an arbitration proceeding or court litigation be pending at the time the reparation complaint is filed with the Commission, the Commission will ordinarily stay the reparation proceeding pending a decision by the arbitration panel or court.

The reparation procedures allow any person to complain of any violation of any provision of the Act by a person registered under sections 4d, 4e, 4k or 4m of the Act within two years after the violation occurs.[2] Such person may apply to the Commission for reparation of a specific amount. The Commission is establishing simple procedures to allow the complaint to be made, to conduct the appropriate hearing and, in the event it is warranted, to set the amount of reparations due to the injured party.

The Commission intends to publish a pamphlet which will explain the procedures so the public can understand its rights in reparation matters and so persons registered with the Commission and subject to the provisions of Section 14 of the Act may understand their commensurate responsibility.

SUMMARY OF THE PROVISIONS OF THE PROPOSED RULES

THE GENERAL INFORMATION SECTIONS

Subpart A of the Reparation Rules contains general information, describing the scope and purpose of the rules (§ 12.1), restricting their application to reparation proceedings (§ 12.2), defining various terms used in the proposed rules (§ 12.3), and noting the address and business hours of the Commission (§ 12.4). Provision is expressly made for waiver of the rules in particular cases to prevent undue hardship or for other good cause (§ 12.5). The Commission has determined to structurally modify § 12.5 and add a provision to § 12.5 providing that the parties will be given reasonable notice of any waiver of the rules. Subpart A also provides that periods of time prescribed by the rules may be modified when appropriate (§ 12.7). The Commission has structurally modified § 12.7 and has amended this provision to provide that the Presiding Officer shall be the Presiding Officer before whom the matter is then pending. In addition, inappropriate *ex parte* communications are forbidden (§ 12.9) and the separation of judicial and prosecutorial functions among Commission staff members is established (§ 12.10). Periods of time set forth in the rules are to be computed in accordance with § 12.6 and a method is set forth for determining the date upon which an order shall be deemed to have been entered (§ 12.8).

Section 12.11 contains provisions concerning appearance and practice before the Commission. Under its terms a complainant or respondent may appear *pro se* (on his own behalf) or be represented by an attorney (§ 12.11(a)), but an attorney or other professional or expert who has been suspended or disbarred from appearance or practice before the Commission in accordance with standards and procedures that will be set forth in a separate part of Title 17 of the Code of Federal Regulations (Part 14) may not appear before the Commission in a reparation proceeding (§ 12.11(b)).

INITIAL PROCEDURE WITH RESPECT TO AND INVESTIGATION OF REPARATION COMPLAINTS

Section 14(a) of the Commodity Exchange Act, 7 U.S.C. 18(a), provides that any person who wishes to complain of

[1] The general rules of practice are set forth in Part 10 and the rules with respect to appearance and practice before the Commission of attorneys and other professionals will be set forth in Part 14.

[2] Only claims arising on or after January 23, 1975, however, may be heard.

a violation of any provision of that Act or of any rule, regulation or order thereunder by any person registered with the Commission under sections 4d, 4e, 4k or 4m of the Act as a floor broker, futures commission merchant, person associated with a futures commission merchant or with agents thereof, commodity trading advisor or commodity pool operator may, within two years after the cause of action accrues, apply to the Commission for a reparation award. Subpart B of the rules—§§ 12.21 through 12.26—establishes the initial steps to be followed by any person seeking to invoke this reparation procedure; the steps that the Commission may take, when appropriate, to bring a complaint to the attention of the persons against whom the reparation award is sought; and the steps those persons may take either to satisfy or to answer the complaint.

Section 12.21(a) prescribes the form that a complaint should take. It generally requires that the complaint briefly state the facts claimed to constitute a violation in a way that will permit each alleged fact to be admitted or denied by the registrant. Certain matters which should be included—such as the names and addresses of the complainant and the persons against whom recovery is sought—are listed.[3] As noted above, the Commission has determined to add a provision to § 12.21(a) requiring a complainant whether there is a pending arbitration proceeding or court action based on the same facts set forth and against the same party or parties named in the complaint. (§ 12.21(a)(7).)

In order to deter baseless allegations, the Commission requires, in § 12.21(b), that the complaint be personally signed and sworn to by the complainant and that it be accompanied by copies of documents available to the complainant which support the claims made. A complaint will be able to be filed in person or by mail at the Commission's principal office in Washington, D.C. (§ 12.12(c)).[4]

Pursuant to § 12.22, upon receipt of a reparation complaint the Commission will evaluate whether the facts set forth in the complaint, if true, demonstrate a violation of any provision of the Act or of any rule, regulation or order thereunder and show that the complainant has suffered damages as a result of the alleged violation. If so, the complaint will be forwarded to the registrant for satisfaction or answer.[5]

The Commission received a comment suggesting that when the Commission determines not to forward the complaint, notification of such a Commission determination be sent to the registrant, since such information would be exceedingly important to registrants. The Commission, upon consideration of this comment, has determined that any such requirement would by unduly burdensome to the Commission. In this regard it should be noted that all such complaints are public documents and available for inspection and copying.

In the form proposed, the rules would have given a registrant 30 days in which to either satisfy the complaints or to answer it in writing. The Commission received a comment suggesting that a registrant be given an additional 15 days to furnish supporting documentation since, in many instances, a registrant may have to obtain documents from various locations. The Commission, after considering the comment and after determining that the parties should be permitted additional time in which to settle the matters complained of in the complaint prior to the filing of an answer, has amended § 12.23 to provide that the registrant will have 45 days in which either to satisfy the complaint or answer it in writing (§ 12.23). If the complaint should be satisfied, the complainant and registrant would be required, under § 12.23(a), to file a notice of satisfaction and withdrawal, after which Commission consideration of the reparation proceeding would terminate. Upon further consideration, the Commission has determined to amend the notice of satisfaction and withdrawal form contained in § 12.23(a) to provide that a registrant, by satisfying the complaint, neither admits nor denies violating any provision of the Commodity Exchange Act, as amended, or any rule, regulation, or order thereunder. It is hoped that this amendment will facilitate the settlement of reparation complaints.

An answer to the complaint will be required to conform to the requirements of § 12.23(b) of the rules, and either admit or deny each factual allegation of the complaint.[6] Similar to the complaint, an answer will be required to be personally signed and sworn to by the registrant, and is to be accompanied by documents evidencing the registrant's view of the facts.

The Commission received a comment stating that with respect to § 12.23(b)(1) it would be difficult or impossible for a firm to have employees or agents, and particularly former employees, swear to answers. The Commission is of the view that the registrant should make every effort to obtain either verification of the answer by employees or agents of the registrant or a verified document from each employee or agent stating why they have not done so. If the registrant is unable to obtain verification of the answer or a verified document stating why the employee or agent will not verify the answer, the registrant shall set forth in its answer that he attempted to obtain the necessary verification or verified document and the reasons he was unable to obtain it.

In the December 1, 1975, notice accompanying the proposed form of these rules, the Commission specifically invited comments with respect to the Commission's statutory authority to permit a "reparation award" based on matters other than alleged violations by a registrant, and whether jurisdiction has been granted, under section 14 of the Act or otherwise, to enter any money-damage award on any other basis. In response to this invitation the Commission received numerous comments objecting to the counterclaim provisions of § 12.23(b)(2) as proposed as unfair, prejudicial to respondents, and contrary to modern rules of practice which attempt to resolve issues and claims in one proceeding and forum. Although one commentator suggested that a counterclaim be permitted whenever it arises out of transactions in commodities which are regulated under the Act, the consensus of the commentators was that there exists ample authority under section 14 to permit counterclaims insofar as the counterclaim arises in whole or in part from the transactions or events which form the basis for the complainant's claim. One commentator also suggested that the rules include a provision allowing a registrant to claim a set-off against a complainant for failure to pay a debit balance or any other material related to the complainant's account.

As proposed, § 12.23(b)(2) would have permitted counterclaims only if the facts set forth as a counterclaim alleged a violation which would be a proper subject of a reparation complaint. After further consideration, the Commission has determined to expand the counterclaim provisions of § 12.23(b)(2). As amended, §12.23(b)(2) will permit a registrant to assert, as a counterclaim, a claim alleging a violation of the Act which would be the proper subject of a reparation complaint, and any claim the respondent has against the complainant if it arises out of the same transaction or occurrence or series of transactions or occurrences set forth in the complaint.

In the event that an answer contains a counterclaim, the complainant will be afforded an opportunity to file a reply

[3] Although formal requirements are prescribed, the Commission will not, of course, apply those requirements uncritically to deny access to the reparation procedure to persons having an apparent basis for their claims. It may be necessary, however, to require a complaint to be resubmitted in a proper form if it should be so poorly prepared that it would be difficult for the registrant to respond to its allegations of wrongdoing and injury.

[4] If the complainant is a non-resident of the United States, he must file a bond in accordance with section 14(d) of the Act; that requirement is reiterated in section 12.21(d) of the proposed rules.

[5] Section 12.22 also makes clear that if the Commission should determine not to forward the complaint, its action, while terminating procedures before the Commission, will be without prejudice to the right of the complainant to seek such other forms of relief as may be available.

Section 12.22 also provides that a registrant under the Act may designate with the Commission an office to which all reparation complaints filed with the Commission against it shall be forwarded. In the absence of such a designation the reparation complaints will be forwarded to the registrant's principal place of business as shown in the records of the Commission.

[6] An answer might admit liability for some but not all of the amount claimed as damages, § 12.23(b)(1), in which case, consistent with the provisions of section 14(e), the matter will proceed as to the amount that remains in dispute, after a reparation award has been entered for the admitted amount (§ 12.33).

which is to be confined to those matters alleged in the counterclaim (§ 12.24). A reply, like the complaint and answer, will be required to be personally signed and sworn to, and be accompanied by all relevant documents.

Section 12.25 of the rules, consistent with Section 14(b) of the Act, 7 U.S.C. 18 (b), recognizes that the Commission may investigate a reparation complaint to the extent and in a manner that it deems appropriate if, in its opinion, there appears to be reasonable grounds to investigate the complaint.[7] If an investigation should be initiated, the Commission will be able for that reason to delay the institution of a formal adjudicatory proceeding with repsect to the complaint (*ibid.*).

If a registrant should fail to file an answer within the period allowed by the rules (or if the complainant should fail to file a reply to a counterclaim within the time allowed), that failure would be treated as an admission of the allegations of the undisputed complaint (or counterclaim), and would constitute a waiver of hearing on the facts alleged in the complaint (or counterclaim). Upon further consideration, the Commission has determined to amend § 12.26(a) so as to provide that a failure to file an answer or reply within the period allowed by the rules will result in the institution of a formal adjudicatory proceeding in accordance with the provisions of § 12.31 upon the payment of the appropriate filing fee set forth in § 12.27. The previously forwarded complaint and answer, if there is a default with respect to a counterclaim, will be deemed to have been served for purposes of instituting the formal adjudicatory proceeding. The proceeding will then be docketed and a Presiding Officer appointed. Thereafter, the complaining party may file a motion requesting the Presiding Officer to enter findings and conclusions concerning the questions of violation and damages and may enter an appropriate reparation award. If the facts treated as admitted are considered by the Presiding Officer to be insufficient to support the amount of reparations sought, however, he may direct that the proceeding continue on the question of damages (*ibid.*).

In the event a default has been entered against a party pursuant to § 12.26(a), the party may file a motion requesting the Commission to set the default aside. Such a motion must be filed within a reasonable time after the default has been entered and will only be granted in order to prevent injustice (§ 12.26(b)).

[7] Of course, the fact that a complaint alleges—or even substantially demonstrates—a violation of law will not, by itself, cause an investigation to be undertaken. The Commission will not be able to divert its limited resources in an attempt primarily to remedy private injuries, particularly where the injured party has shown a willingness to assert his own rights by pressing for a reparation award. Rather, a decision whether to investigate will be made in light of a broader public interest that would apparently be served by devoting the time of enforcement and compliance personnel to a particular matter.

The Commission has also determined to require a complainant to pay a filing fee before the Commission will institute a formal adjudicatory proceeding (§ 12.27). Pursuant to § 12.27 the Commission will, prior to the institution of a formal adjudicatory proceeding, serve on the complainant and the registrant, a notice informing them that in the opinion of the Commission the facts warrant such a proceeding. The complainant will thereafter be required to pay the applicable filing fee set forth in § 12.27 within a reasonable period of time. Failure to pay the required filing fee within a reasonable time may result in the Commission terminating consideration of the complaint.

INSTITUTION AND SETTLEMENT OF FORMAL ADJUDICATORY PROCEEDINGS

A formal adjudicatory proceeding may be instituted with respect to a reparation complaint if, in the Commission's opinion, the facts warrant such action (§ 12.31). Should a formal adjudicatory proceeding be commenced it is the position of the Commission that the complainant may not thereafter withdraw his complaint absent approval by the respondent. With respect to the withdrawal of the complaint, it is the position of the Commission that a complainant may withdraw his complaint, without prejudice, at any time prior to the institution of a formal adjudicatory proceeding, provided no counterclaim has been set forth in the answer. In the event a counterclaim is contained in the answer the complainant may not withdraw his complaint without the approval of the registrant.

The rules, as proposed, provided for the service of the complaint if a formal proceeding was instituted. The Commission has amended § 12.31 to provide that if a formal proceeding is to be commenced, the Commission will formally serve on the complainant and respondent a notice that a formal adjudicatory proceeding has been instituted, based on the previously forwarded complaint, answer and reply, if any. As provided in section 14(b) of the Act, § 12.31 provides that in matters where the amount claimed as damages exceeds $2,500, the notice will advise the parties to the proceeding that an opportunity will be afforded for a hearing before an Administrative Law Judge. In the form proposed, the rules provided that the hearing would be held at a place in which the respondent is engaged in business that was the most convenient to the complainant. Upon further consideration the Commission has determined to amend this portion of § 12.31 to provide that the hearing will be held in a place where the respondent is engaged in business with due regard given to the convenience of the parties in determining the place where the hearing is to be held.[8] Where the damages claimed are less than $2,500, the rules provide, in accordance with section 14(b), that no oral hearing will be held but that the respondent will instead be notified that the summary procedure embodied in Subpart G of the proposed rules—permitting facts to be resolved through deposition and other sworn statements rather than at an oral hearing—shall be applicable.[9]

[8] Of course, if the parties should agree to a hearing in another location the Administrative Law Judge could so order.

If the Commission should determine not to institute a formal adjudicatory proceeding the reparation proceeding will, of course, terminate. Section 12.32 emphasizes, however, that the termination will be without prejudice to the right of the complainant to pursue alternative forms of relief available to him. Thus, since his rights have not been adjudicated on the merits, the complainant might, for example, institute an action for damages in an appropriate court[10] or alternatively, the complainant might utilize the arbitration procedure of an appropriate contract market.

It may frequently occur that after the proceeding has been formally initiated the parties will settle the case to their mutual satisfaction. Accordingly, § 12.34 provides for the filing of statements of satisfaction and discontinuance of proceedings at any time prior to a final determination of the proceeding. Upon the filing of a statement of satisfaction the proceeding will be discontinued.

FORMAL ADJUDICATORY PROCEEDINGS

When the notice informing the complainant and respondent that a formal proceeding has been instituted has been formally served, or upon a default (§ 12.26) or admission of partial liability (§ 12.33), a docket number will be assigned (§ 12.41) and a Presiding Officer will be designated (§ 12.42), who will be responsible for the fair and orderly conduct of the proceeding. Among other things, the Presiding Officer will be required to make an initial decision on the merits of the case, which might become the final administrative decision in the matter if review by the Commission is not sought or if the Commission should decline to grant review of the matter (see §§ 12.84 and 12.95). Under the rules a Presiding Officer may withdraw from any proceeding if he believes himself to be disqualified, and any party may request that he disqualify himself (§ 12.44).

The Presiding Officer may allow amendments to the pleadings and the

[9] The Commission may, of course, direct that a hearing be held even with respect to matters involving less than $2,500. (§ 12.71 (2)).

[10] The courts have repeatedly recognized that a person injured by acts in violation of the Commodity Exchange Act, as amended, has a cause of action for damages. See, e.g., Deaktor v. L. D. Schreiber & Co., 479 F. 2d 529 (7th Cir. 1973); Booth v. Peavey Company Commodity Services, 430 F. 2d 132 (8th Cir. 1970); Case & Co., Inc. v. Board of Trade of the City of Chicago, CCH Commodity Futures L. Rep. ¶20,079 (7th Cir. September 12, 1975). The fact that Congress has provided an additional remedy through reparation procedures does not affect the right of an injured party to obtain relief before the courts.

filing of supplemental pleadings in accordance with the provisions of § 12.45. In addition, he will consider and rule upon all motions made in the course of the proceeding, which must be presented and answered in the manner prescribed in § 12.46. Ordinarily, the Presiding Officer's ruling on a motion made in the course of a proceeding will be reviewed by the Commission, if at all, only at the same time that the Commission reviews the final disposition of the matter by the Presiding Officer. In certain extraordinary circumstances, which are set forth in § 12.47(a), however, an interlocutory appeal to the Commission—an appeal concerning one issue while the proceeding otherwise continues—may be permitted in accordance with procedures set forth in § 12.47(b).

The remainder of Subpart D of the rules prescribe the procedure to be followed with respect to the service of motions, petitions and applications (§ 12.48) and of decisions and orders made in the course of the proceeding (§ 12.49); the designation of persons who may receive service on behalf of parties (§ 12.50); and provisions concerning the filing of documents with the Hearing Clerk (§ 12.52) [11] and the manner in which documents must be signed (§ 12.53).

PREHEARING CONFERENCES AND DISCOVERY

Under Subpart E, Section 12.61 authorizes the Presiding Officer to direct the holding of prehearing conferences to clarify the issues and take other steps to facilitate the proceeding and promote a fair and expeditious hearing.

The rules in the form proposed reserved §§ 12.62 and 12.92 for the implementation of discovery procedures in reparation proceedings. The release accompanying the proposed rules requested comments concerning the extent to which discovery should be permitted in reparation proceedings and suggestions as to the type of discovery procedures the Commission should adopt. Although no comments with respect to discovery were received by the Commission, the Commission has determined that a procedure with respect to discovery must be adopted at this time. The rules therefore contain, in §§ 12.62 through 12.66 and 12.92 the discovery procedures that will be applicable to reparation proceedings.

Section 12.62 sets forth the methods, scope and time limits with respect to discovery. Pursuant to § 12.62(a) discovery is limited to the production of documents (§ 12.63), depositions upon written interrogatories (§ 12.64) and admissions (§ 12.65). The Commission has determined to limit discovery to those three methods in order to reduce the expense of reparation proceedings to the parties.

Section 12.62(b) sets forth the scope of discovery and also provides for the issuance of protective orders to prevent abuse of the discovery procedures or to protect sensitive commercial information. Section 12.62(c) provides that the Presiding Officer shall specify the time during which all discovery shall be conducted and completed.

Pursuant to § 12.63 the parties may obtain documents from any other party to the proceeding. Such documents are to be obtainable upon notice to the party from whom such discovery is sought. A party need not initially apply to the Presiding Officer for an orde ror subpoena.

Section 12.64 provides for depositions upon written interrogatories. Such depositions sholl be obtainable upon notice to a party to the proceeding. With respect to non-parties, however, a party wishing to take a deposition upon written interrogatories will be required to seek an order and subpoena from the Presiding Officer prior to the service of the notice (Section 12.64(c)). Section 12.64(c) also provides that in order to take the deposition upon written interrogatories of a member or employee of the Commission, it must be shown that the member or employee has personal knowledge of the facts and circumstances sought to be discovered (i.e., knowledge obtained from a source other than pursuant to a Commission investigation), that the information sought to be discovered is relevant and material, and that the information sought to be discovered is not available from other sources.

The rules also provide, in § 12.65, that a party may serve on any other party a request for written admissions. A reply to the request is to be served within 15 days. (Section 12.65(b)). The effect of an admission hall be that the matter admitted is conclusively established and may be used at hearing against the party who made the admission. (Section 12.65(d)).

Section 12.66 enumerates the relief obtainable by a party for another party's failure to comply with a notice to produce documents, a notice to take a deposition upon written interrogatories or a request for admissions.

HEARINGS

Subpart F of Part 12 contains provisions governing oral hearings held before an Administrative Law Judge. As set forth in § 12.71 of the rules, an oral hearing will normally be held in proceedings where the damage claimed is in excess of $2,500 and the parties have not waived their right to an oral hearing. In all other cases §§ 12.71(a)(2) and 12.71 (a)(3) require that the summary proceeding set forth in Subpart G, discussed below, will be followed. The effect of a party's failure to appear at a hearing is set forth in § 12.71(c), which provides that he will be considered to have waived the right to an oral hearing in the proceeding.

In the form proposed, § 12.71(d) would have required that the hearing be held at a place where the respondent is engaged in business that is most convenient to the complainant. A comment was received objecting to this portion of § 12.71 (d) on the ground that such a provision would constitute a significant and costly burden to the Commission since respondents may have offices in inconvenient locations. The commentator suggested that the hearings be held in the Commission's regional or sub-offices. The Commission, upon further consideration of this portion of § 12.71(d), has determined to amend § 12.71(d) to provide that a hearing will be held at a place where the respondent is engaged in business, with due regard given to the convenience of the parties to the proceeding.

The Commission received a number of comments objecting to that portion of § 12.71(a)(2) which provides that where the amount of the damages claimed, either in the complaint or in a counterclaim, does not exceed $2,500, an oral hearing shall not be held unless ordered by the Commission, either on its own motion or upon the application by a party. This portion of § 12.71 is an incorporation of section 14(b) of the Act, which provides that an oral hearing need not be held where the claimed damages do not exceed $2,500. After consideration of this comment the Commission has determined that § 12.71(a)(2) is consistent with the Act, that there are no valid objections to this procedure and that to provide for hearings in each and every reparation proceeding, no matter how small the amount sought to be recovered, would be unduly burdensome to the Commission.

As proposed, § 12.72 provided for the consolidation of proceedings in two situations. Pursuant to paragraph (a) of proposed § 12.72 a reparation proceeding could be joined for hearing or consolidation with a proceeding instituted by the Division of Enforcement only upon motion of the Division of Enforcement and only where the respondent in both proceedings is the same person or entity. Under paragraph (b) of the proposed version of § 12.72 the Chief Administrative Law Judge could order consolidation of two or more reparation proceedings based upon complaints alleging similar activities by a respondent affecting the several complainants.

The Commission received several comments objecting to that portion of the proposed version of § 12.72 which permitted the consolidation of a reparation proceeding with a Commission enforcement proceeding. It was the opinion of the commentators that any such consolidation would be improper and extremely prejudicial to respondents, and that the mere possibility of such a consolidation might place respondents in a "guarded" position from the beginning of a reparation proceeding.

After further consideration the Commission has determined not to adopt subparagraph (a) of the proposed version of § 12.72 which would have permitted the consolidation of a reparation and enforcement proceeding upon the motion of the division of Enforcement where the respondent in both proceedings was the same person or entity. As amended, § 12.72 permits consolidation only where two or more reparation pro-

[11] Section 12.52(c) has been amended by the Commission to provide that all documents are to be bound on the top only, so as to accommodate the Commission's filing system.

ceedings (as contrasted with an enforcement proceeding) are based on complaints alleging similar activities by a respondent affecting the several complainants. The Commission, although removing the provision permitting the consolidation of reparation proceedings and enforcement proceedings, is of the opinion that evidence gained in reparation proceedings is to be available in enforcement actions against the same registrants based on the facts set forth in the reparation complaint. The Commission will review this provision after it has had experience with reparation proceedings to determine whether this type of consolidation should be permitted.

Section 12.72 also provides that an Administrative Law Judge may enter appropriate orders to avoid unnecessary costs or delay (Section 12.72(b)), and that any party to a reparation proceeding which has been consolidated with another may seek interlocutory review by the Commission of the consolidation order (Section 12.72(c)).

Pursuant to § 12.73 all reparation hearings shall generally be public. A party or an affected witness may, however, make an application to the Administrative Law Judge for an order directing that specific testimony or documents be received and retained non-publicly in order to prevent the unwarranted disclosure of trade secrets or sensitive commercial or financial information or to prevent an unwarranted invasion of personal privacy.[12]

In order to compel the attendance of witnesses at a reparation proceeding and to compel the production of documentary evidence, § 12.74(a)(1) and (2) provides for the issuance of subpoenas at the request of any party. Standards for the issuance of subpoenas are set forth in paragraph (a)(3) and the basis upon which an application may be denied is set forth in paragraph (a)(4). Attendance and mileage fees are to be the same as are paid to witnesses in United States courts § 12.74(a)(5)).

Section 12.74 has also been amended to insert provisions with respect to the issuance of subpoenas for Commission records and for the appearance of Commission employees (§ 12.74(b)). When the subpoena is directed to records of the Commission or to the appearance of Commission members, officers or employees, more formal procedures and standards will be applied. An application must be made by motion and with notice to the other parties to the proceeding. The motion must specifically describe the material to be produced, the information to be disclosed and the testimony to be elicited and must show the relevance of the information to the matters in issue, and the reasonableness of the scope of the request. It must also show that the information cannot be obtained from other sources. The Administrative Law Judge is then directed in light of these standards, to determine whether or not the subpoena should be issued and to issue any protective limitations which appear appropriate. These limitations are considered necessary in order to prevent undue interference with an agency's functioning that might result if subpoenas could be served indiscriminately upon the personnel of an agency.

Provision is also made for applications requesting the Commission to quash subpoenas and the proposed rules establish the basis upon which such an application will be decided (§ 12.75).

Subpoenas must be served in the manner prescribed in § 12.76. If any person should fail to comply with a subpoena, § 12.77 permits the affected party to apply to the Commission to have the Commission seek judicial enforcement of the subpoena.

Section 12.78(a) requires that all reparation hearings be recorded and transcribed into written form by a reporter employed by the Commission, that the transcript will be part of the record, and that copies of hearing transcripts will be available from the reporter at rates not to exceed the maximum rates fixed by the contract between the Commission and the reporter. A procedure for the correction of transcripts is afforded in § 12.78(b).

In accordance with the provisions of § 12.79, hearings are to be conducted as expeditiously as possible, consistent with the protection of the rights of the parties. With respect to the parties' rights, § 12.79(b) assures all parties sufficient notice of the hearing, the right to be represented by counsel, to cross-examine witnesses, present oral and documentary evidence, raise objections, make arguments and move for any and all appropriate relief.

All witnesses will testify under oath or affirmation and may be examined and cross-examined as to all matters relevant to the issues in the reparation proceeding (§ 12.79(c)).

Section 12.79(d) requires that the original of each exhibit introduced in evidence or marked for identification at a hearing is to be filed and retained in the docket unless the Administrative Law Judge permits the substitution of copies for the originals.

Under the rules, all relevant, material and reliable evidence will be admitted at the hearing, subject to the exclusion only of unduly repetitious evidence (§ 12.80(c)). Pursuant to § 12.80(d), no formal exception to an adverse ruling would be required; it will be sufficient if a party makes known to the Administrative Law Judge, at the time the ruling is sought or entered, his objections to the action being taken and his grounds for so objecting. With respect to excluded evidence, § 12.80(e) permits a party to state what he intended to prove by the excluded evidence and the Administrative Law Judge is authorized to receive (although he will not consider) the excluded evidence to complete the record for possible appeal. With respect to specific types of evidence, § 12.80(f) through (i) provide that affidavits may be admitted in some circumstances and that stipulations, official government records and entries in the regular course of business will generally be admissible.

Pursuant to § 12.81, the reporter is required to transit to the Hearing Clerk the transcript of the testimony and the exhibits introduced as soon as practicable after the close of the hearing; it will be the responsibility of the Hearing Clerk to advise all parties of the date upon which the transcript was filed. Thereafter, in accordance with the procedure set forth in § 12.82 or in accordance with such alternative procedures as the Administrative Law Judge may prescribe, the parties will be afforded the opportunity to serve and file proposed findings of fact and conclusions of law, and briefs in support of their position.[13] Requirements with respect to the form and content of briefs and of proposed findings and conclusions are set forth in paragraphs (c) and (d) of § 12.82. Pursuant to § 12.83 the Administrative Law Judge will be permitted—but not required—to allow oral argument prior to the filing of his initial decision.

The Administrative Law Judge will make an initial decision in each reparation proceeding in which an oral hearing has been held (§ 12.84(a)).[14] In his decision he is required to determine whether a party has violated any provision of the Act, or any rule, regulations or order thereunder. If a violation is found to have occurred, he is also required to determine the amount of damage to which a party is entitled and enter an appropriate order directing payment (§ 12.84(b)).

The Commission has determined to include in the rules a provision with respect to the recovery of costs by the party in whose favor a judgment is entered (§ 12.27(c)). Section 12.27(c) therefore permits the Administrative Law Judge, in his initial decision, to award costs to the successful litigant in a formal adjudicatory proceeding. Such costs may include the filing fees should the complainant prevail.

In the form proposed, § 12.84(c) provided that the initial decision was to be filed within 30 days after the final date allowed for the submission of proposed findings, conclusions and briefs. As amended, § 12.84(c) provides that the initial decision will be filed with the Hearing Clerk and a copy served on each party as soon as practicable after the final date allowed for the submission of proposed findings, conclusions and briefs.

[12] The Freedom of Information Act permits the Commission to withhold records of the proceeding from public disclosure for these limited purposes. See 5 U.S.C. 552(b)(4) and 552(b)(6).

[13] Pursuant to § 12.82(a) the complainant will normally be required to serve and file proposed findings, conclusions and an initial brief within 45 days after the close of the hearings. Respondent's proposed findings, conclusions and answering brief will be required within 30 days after service of the complainant's initial submissions. Thereafter the complainant may serve and file a reply brief within 15 days.

[14] Where an oral hearing has not been held, the initial decision will be made in accordance with the summary proceedings set forth in Subpart G, discussed below.

The Administrative Law Judge will, however, attempt to file an initial decision within 30 days after the final date allowed for the submission of proposed findings, conclusions and briefs.

The initial decision and order will become the final decision and order of the Commission within 30 days after service, unless the Commission, on motion of a party or on its own motion, determines to review the proceeding, in which event the decision will not be final as to affected parties until after the Commission has completed its review (§ 12.84(d)).

SUMMARY PROCEEDINGS

The Summary Proceedings set forth in Subpart G of proposed Part 12 will be employed in all cases where the amount of damage claimed in a complaint (or counterclaim) does not exceed $2,500 and an oral hearing is determined by the Commission not to be necessary for the adjudication of the complaint (or counterclaim). It may also be employed where the parties have waived the opportunity for an oral hearing before an Administrative Law Judge. No oral hearing will be held in proceedings conducted pursuant to Subpart G; rather, as contemplated by section 14(b) of the Act, 7 U.S.C. 18(b), proof in support of the complaint and answer may be supplied in the form of depositions or other verified statements of fact (§ 12.91).

The release containing the proposed rules reserved the discovery procedure to be adopted for summary proceedings (§ 12.92). The Commission has determined to adopt discovery procedures which are to be applicable to all reparation proceedings, i.e., both summary proceedings and proceedings in which an oral hearing before an Administrative Law Judge is held. Section 12.92, therefore, incorporates by reference the discovery provisions of §§ 12.62 through 12.66 and makes them applicable to summary reparation proceedings.

Pursuant to proposed § 12.93 the parties would be required to serve and file with the Commission copies of all depositions or other verified statements upon which they rely in support of their pleadings. Thereafter, the parties will be entitled to respond to evidence to which they have not previously responded. In addition, the parties will be afforded the opportunity to file proposed findings and conclusions as well as briefs supporting the allegations contained in their pleadings in the same manner and to the same extent as will be permitted in proceedings involving a hearing (§ 12.94).

The Presiding Officer is required to file, as soon as practicable after the final date allowed for filing proposed findings of fact and briefs, an initial decision and order which shall set forth the basis for his determination and the amount of damages, if any, to which a party is entitled if a violation of the Act or any rule, regulation or order thereunder is found to have occurred (§ 12.95). The Presiding Officer may, in his initial decision, also award costs to the party in whose favor a judgment is entered (§ 12.95(c)). The Presiding Officer will, however, attempt to file an initial decision within 30 days after the final date allowed for filing proposed findings of fact and briefs. The initial decision and order will be filed with the Hearing Clerk, who will serve copies on the parties (§ 12.95(d)).

Thereafter the initial decision and order of the Presiding Officer will become the final decision of the Commission unless the Commission, on motion of a party or on its own motion, determines to review the initial decision, in which event the decision will not be final as to affected parties until after the Commission has completed its review. (Section 12.95 (e)).

The Commission received a comment suggesting that the time of payment of any award should be 10 days after the decision becomes final. The Commission, upon consideration of this suggestion, has determined that the Presiding Officer should be permitted to set the date by which payment is to be made and is therefore adopting § 12.95(d) in the form proposed.

REVIEW OF INITIAL DECISIONS BY THE COMMISSION

Subpart H of the proposed rules, §§ 12.101 and 12.102, sets forth the procedures by which the Commission may review an initial decision in a reparation proceeding. Under § 12.101, the Commission may, in its discretion, grant review of an initial decision in a reparation proceeding either upon its own motion or upon application for review by any party. An application for review will be required to be served and filed within fifteen days after the initial decision was served upon the parties (§ 12.101(a)(1)), and will be required, among other things, to present specific issues sought to be reviewed and set forth reasons why review by the Commission is necessary or appropriate to resolve one or more important issues of law or public policy (§12.101(a)(2)). After the time has run in which a response may be filed (§ 12.101(a)(3)), the Commission will decide whether to grant review, based upon the application and response, without oral argument or further written presentation, unless the Commission should otherwise direct (§ 12.101(a)(5)). Pursuant to § 12.101(b), if review should be granted, the Hearing Clerk will serve a copy of the order granting review on each of the parties.

Unless the Commission should otherwise direct, only the issues presented in the application, and all subsidiary questions fairly subsumed therein, will be considered by the Commission (§12.101 (b)). Briefs and appendices to briefs will be filed in accordance with general provisions contained in the Commission's rules of practice, except that the brief of the party who sought review will be required to be filed within 30 days after service of notice that the initial decision will be reviewed (§ 12.101(d)). If the Commission decides on its own motion to grant review, the complainant will be the party who will file the initial brief within that period.

The rules in the form proposed did not have provisions with respect to appendices to briefs. The rules as adopted, however, specifically incorporate the applicable appendix provisions of the rules of practice, which have been adopted by the Commission. (§ 12.101(d)).

Whether oral argument will be permitted is a matter that will rest in the sole discretion of the Commission; if oral argument is permitted, it will be conducted in the manner that the general rules of practice prescribe.

When the Commission determines to review an initial decision, the record of the proceeding will be made available to the Commission pursuant to § 12.102. For this purpose the record will include all documents filed in the proceeding from the time the complaint was originally filed; all briefs and memoranda that were submitted; the transcript of testimony (if any) and exhibits; and all orders entered in the course of the proceeding, as well as the initial decision.

Accordingly, the Commission hereby adopts the following Part 12 to Chapter 17 of the Code of Federal Regulations pursuant to authority of section 14 of the Commodity Exchange Act, as amended, 7 U.S.C. 18 and 7 U.S.C. 483a.

Subpart A—General Information

Sec.	
12.1	Scope and applicability of rules practice relating to reparation proceedings.
12.2	Applicability of other rules of practice promulgated under the commodity Futures Trading Commission Act.
12.3	Definitions.
12.4	Business address; hours.
12.5	Suspension, amendment, revocation and waiver of rules.
12.6	Computation of time.
12.7	Changes of time permitted for filing.
12.8	Date of entry of orders.
12.9	Ex parte communications in reparation proceedings.
12.10	Separation of functions.
12.11	Appearance and practice before the commission.

Subpart B—Initial Procedure With Respect to Reparation Complaints

Sec.	
12.21	Complaint.
12.22	Notification to registrant of complaint.
12.23	Response to complaint.
12.24	Reply.
12.25	Investigation of complaint.
12.26	Effect of failure to file an answer or reply; default.
12.27	Filing fees.

Subpart C—Institution and Settlement of Formal Adjudicatory Proceeding

Sec.	
12.31	Institution of formal adjudicatory proceeding.
12.32	Discontinuance of proceeding.
12.33	Admissions of partial liability.
12.34	Settlement—statements of satisfaction and discontinuance of proceedings.

Subpart D—Formal Adjudicatory Proceeding

Sec.	
12.41	Docketing of proceeding.
12.42	Assignment to presiding officer.
12.43	Functions and responsibilities of the Presiding Officer.
12.44	Disqualification of Presiding Officer.
12.45	Amendments and supplemental proceedings.

Sec.
12.46 Motions.
12.47 Interlocutory review by the Commission.
12.48 Service.
12.49 Service of decisions and orders.
12.50 Designation of person to receive service.
12.51 Filing of documents with the Hearing Clerk.
12.52 Formalities of filing.
12.53 Subscription.

Subpart E—Prehearing Conferences and Discovery

Sec.
12.61 Conferences; procedural matters.
12.62 Discovery.
12.63 Production of documents and tangible things.
12.64 Depositions on written interrogatories.
12.65 Admissions.
12.66 Consequences of the failure of a party to comply with a discovery notice or request.

Subpart F—Hearings

Sec.
12.71 Oral hearings.
12.72 Consolidations.
12.73 Public hearings.
12.74 Subpoenas.
12.75 Motions to quash Subpoena.
12.76 Service of Subpoenas.
12.77 Enforcement of Subpoenas.
12.78 Record of hearing.
12.79 Conduct of the hearing.
12.80 Evidence.
12.81 Filing the transcript of evidence.
12.82 Proposed findings and conclusions; briefs.
12.83 Oral arguments.
12.84 Initial decison.

Subpart G—Summary Proceedings

Sec.
12.91 Presiding Officer; evidence.
12.92 Discovery.
12.93 Submission of evidence.
12.94 Proposed findings and conclusions; briefs.
12.95 Initial decision.

Subpart H—Commission Review of Initial Decisions in Reparation Proceedings

Sec.
12.101 Application for commission review.
12.102 The Record of Proceeding.

AUTHORITY: (Pub. L. 93-463, Sec. 14, 88 Stat. 1389, (7 U.S.C. 18; 7 U.S.C. 483a).)

Subpart A—General Information

§ 12.1 Scope and applicability of rules of practice relating to reparation proceedings.

These rules of practice are applicable to reparation proceedings pursuant to section 14 of the Commodity Exchange Act, as amended, 7 U.S.C. 18. The rules in this part shall be construed liberally so as to secure the just, speedy and inexpensive determination of the issues presented with full protection for the rights of all parties to the proceedings envisioned by the Commodity Exchange Act, as amended.

§ 12.2 Applicability of other rules of practice promulgated under the Commodity Futures Trading Commission Act.

Unless specifically made applicable, other Rules of Practice promulgated under the Commodity Exchange Act, as amended, shall not apply to reparation proceedings.

§ 12.3 Definitions.

For purposes of this part:

(a) "Act" means the Commodity Exchange Act, as amended, 7 U.S.C. 1, et seq.;

(b) "Administrative Law Judge" means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) "Administrative Procedure Act" means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559.

(d) "Commission" means the Commodity Futures Trading Commission;

(e) "Complainant" means a person who has applied to the Commission seeking a reparation award pursuant to Section 14 of the Act, 7 U.S.C. 18;

(f) "Complaint" means any document initiating a reparation proceeding pursuant to section 14(a) of the Act, 7 U.S.C. 18(a), whether designated a complaint or petition or otherwise;

(g) "Division of Enforcement" means that office in the Commission which, among other things, prosecutes in accordance with the Commission's rules of practice contained in Part 10 of this chapter;

(h) "Hearing" means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission;

(i) "Hearing Clerk" means that member of the Commission's staff designated as such in the Commission's Office of Hearings and Appeals;

(j) "Order" means the whole or any part of a final procedural or substantive disposition of a reparation proceeding by the Commission or by the Presiding Officer;

(k) "Party" includes a complainant, respondent and any other person or agency named or admitted as a party to a reparation proceeding;

(l) "Person" includes an individual, partnership, corporation, association, exchange or other entity or organization;

(m) "Petition" means any document initiating a reparation proceeding pursuant to section 14(a) of the Act, 7 U.S.C. 18(a), whether designated a petition or complaint or otherwise;

(n) "Pleading" means the complaint, the answer to the complaint, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(o) "Presiding Officer" means (a) an Administrative Law Judge in all matters where the amount of damages claimed exceeds $2,500, and all cases where the amount of damages claimed is less than $2,500 but where the Commission has determined that a hearing is necessary; and (b) a member of the Commission, an Administrative Law Judge, a Hearing Officer, or such other Commission employee as may be designated by the Commission to conduct the proceeding in all other matters where the amount of damages claimed in the complaint is less than $2,500;

(p) "Proceeding" includes any reparation proceeding and any proceeding conducted pursuant to the rules of practice set forth in Part 10 of this chapter;

(q) "Registrant" means any person registered under section 4d, 4e, 4k or 4m of the Commodity Exchange Act, as amended, as a futures commission merchant, floor broker, person associated with a futures commission merchant or agents thereof, commodity trading advisor or commodity pool operator;

(r) "Respondent" means any person against whom a complainant seeks a reparation award pursuant to Section 14 of the Act, 7 U.S.C. 18;

(s) "Reparation award" refers to the amount of damages a respondent may be ordered to pay as provided in section 14(e) of the Act, 7 U.S.C. 18(e);

(t) "Reparation proceeding" means a proceeding pursuant to which a complainant seeks a reparation award against one or more respondents in accordance with section 14 of the Act, 7 U.S.C. 18;

§ 12.4 Business address; hours.

The principal office of the Commission, is located at 1120 Connecticut Avenue, NW., Washington, D.C. 20036, telephone: (202) 54-3031. It is open each day, except Saturdays, Sundays and legal public holidays from 8:15 a.m. to at least 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, D.C. If Commission personnel are present in the offices after 4:45 p.m., they may, at their discretion, accept documents for filing and serve the public in other matters within the scope of this part. Legal holidays include New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other legal holidays recognized by the Federal Government.

§ 12.5 Suspension, amendment, revocation and waiver of rules.

(a) These rules may, from time to time, be suspended, amended or revoked in whole or in part. Notice of such action will be published in the FEDERAL REGISTER.

(b) In the interest of expediting decision or to prevent undue hardship on any party or for other good cause the Commission may order the adoption of expedited procedures and may waive any rule in Subparts D through H of this part in a particular case and may order proceedings in accordance with its direction upon a determination that no party will be prejudiced and that the ends of justice will be served. Reasonable notice shall be given to all parties of any action taken pursuant to this provision.

(c) The Presiding Officer, to expedite decision or to prevent undue hardship on any party may waive any rule in Subparts D through G of this part, when neither party is prejudiced thereby. Reasonable notice shall be given all parties of any action taken pursuant to this provision.

§ 12.6 Computation of time.

In computing any period of time prescribed by these rules or allowed by the

Commission, or the Presiding Officer, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation only when the period of time prescribed or allowed is less than seven (7) days.

§ 12.7 Changes of time permitted for filing.

Except as otherwise provided by law or by these rules, for good cause shown, the Commission, or the Presiding Officer before whom a matter is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by the rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken in a proceeding, the Commission or the Presiding Officer may set a time limit for that action.

§ 12.8 Date of entry of orders.

In computing any period of time involving the date of the entry of an order the date of entry shall be the date the order is served with the Hearing Clerk.

§ 12.9 Ex parte communications in reparation proceedings.

(a) Except as authorized by law, or specifically permitted in these rules, the Presiding Officer shall not consult with any person or any party upon any fact in issue except upon notice and opportunity for all parties to participate.

(b) A written or oral communication involving any substantive or procedural issue in the proceeding shall be deemed an ex parte communication, unless the communication is made with due notice to all other parties. Any ex parte communication in writing shall be made public by the Presiding Officer by placing it in the correspondence file of the docket. If the ex parte communication is received orally, a memorandum setting forth the substance of the communication shall be made and filed in the correspondence section of the docket. In either case, notice of such communication will be given to the parties.

§ 12.10 Separation of functions.

(a) A Presiding Officer will not be responsible to or subject to the supervision or direction of any officer, employee, or agent of the Commission engaged in the performance of investigative or prosecutorial functions for the Commission.

(b) No officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of the Presiding Officer, except as a witness or counsel in the proceeding, without the express written consent of the respondents in the proceeding. This provision shall not apply to the Commission or a member or members of the Commission.

§ 12.11 Appearance and practice before the Commission.

(a) *Appearance*—(1) *By non-attorneys.* An individual may appear pro se (in his own behalf), a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest Court of any State or territory or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with provisions of Part 14 of this Chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Practice Before the Commission.* Any person may practice before the Commission in connection with a reparation proceeding who has not been suspended or disbarred from appearance or practice before the Commission in accordance with provisions of Part 14 of this Chapter.

(c) *Debarment of Counsel or Representative by Presiding Officer During the Course of a Proceeding.* (1) Whenever, while a proceeding is pending before him, the Presiding Officer finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Presiding Officer may order that such person be precluded from further acting as counsel or representative in such proceeding. An immediate appeal to the Commission may be taken from any such order, pursuant to the provisions of § 12.47, but the proceeding shall not be delayed or superseded pending disposition of the appeal; *Provided,* That the Presiding Officer may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(2) Whenever the Presiding Officer has issued an order precluding a person from further acting as counsel or representative in the proceeding, the Presiding Officer, within a reasonable time thereafter, shall submit to the Commission a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Commission should take respecting the appearance of such person as counsel or representative in other proceedings before the Commission.

Subpart B—Initial Procedure With Respect to Reparation Complaints

§ 12.21 Complaint.

Any person complaining of any violation of any provision of the Act or any rule, regulation, or order thereunder by any person registered with the Commission under sections 4r, 4e, 4k or 4m of the Act as a futures commission merchant, floor broker, person associated with a futures commission merchant or agents thereof, commodity trading advisor or commodity pool operator may, at any time within two years after the cause of action accrues, apply to the Commission for a reparation award by petitioning the Commission to determine the amount of damage, if any, to which the complainant is entitled as a result of the violation and to issue an order directing the offender to pay that amount to the complainant on or before a date fixed by the order; *Provided,* That no such application shall be considered with respect to claims that arose prior to January 23, 1975.

(a) *Form of complaint.* A complaint submitted to the Commission pursuant to this section shall briefly state the facts that are claimed to constitute a violation of any provision of the Act or any rule, regulation or order thereunder. The facts should be set forth in a manner that will permit each fact to be admitted or denied, as the case may be, by the person or persons alleged to have committed the violations. Each complaint shall include:

(1) The name and residence address of the complainant;

(2) The name and address, if known, of each person alleged in the complaint to have violated the Act or any rule, regulation or order thereunder;

(3) If possible, the specific provisions of the Act, rule, regulation or order claimed to have been violated;

(4) All relevant facts concerning each and every act or ommission which it is claimed constitute a violation, including the date and place of each alleged act or omission;

(5) Facts showing the manner in which it is claimed the complainant was injured by the alleged violations;

(6) The amount of damages the complainant claims to have suffered and the method by which those damages have been computed; and

(7) A statement that no arbitration proceeding or civil court litigation, based on the same facts set forth and against the same parties named as respondents in the complaint, has been instituted or is presently pending.

(b) *Subscription and verification of the complaint; exhibits.* Each complaint shall be signed personally by an individual complainant or by a duly authorized officer or agent of a complainant who is not a natural person. His signature shall be given under oath attesting either that he knows the facts set forth in the complaint to be true, or that he believes the facts set forth to be true, in which event the information upon which he formed that belief shall be set forth with particularity. A true copy of each and every document possessed by or available to the complainant which evidences the facts set forth in the complaint shall be annexed to the complaint.

(c) *Time and place of filing of complaint.* A complaint shall be filed by delivering a copy thereof, in proper form, to the Commission at its principal offices in Washington, D.C., addressed to the

attention of the Reparations Section. The complaint may be filed in person, during normal business hours, or by mail.

(d) *Bond required if complainant is non-resident.* If a petition for reparations is filed by a non-resident of the United States, the complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of (1) costs, including reasonable attorney's fees, for the respondent if the respondent shall prevail; and (2) any reparation award that may be issued by the Commission against the complainant on any counterclaim asserted by respondent: *Provided,* That the furnishing of a bond may be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

§ 12.22 Notification to registrant of complaint.

If, in the opinion of the Commission, the facts set forth in a complaint warrant such action, a copy of the complaint, together with any attachments thereto, shall be forwarded by registered mail, certified mail, or otherwise by the Commission to each registrant named therein at an office previously designated with the Commission by the registrant for receipt of reparation complaints or, if no such designation has been filed with the Commission, at the registrant's principal place of business as shown in the records of the Commission. The complaint shall not be forwarded if it appears, in the opinion of the Commission, that the alleged facts, even if true, do not evidence a violation of the Act or any rule or regulation or order thereunder or do not show that the complainant suffered damages as a result of the alleged violation. If the Commission should determine not to forward the complaint to the registrant in accordance with this section, no proceeding shall be held thereon and the complainant shall be notified to that effect, but this decision shall be without prejudice to the right of the complainant to seek such alternate forms of relief as may be available.

§ 12.23 Response to complaint.

Within forty-five (45) days after the complaint was forwarded by registered mail, certified mail, or otherwise to the registrant, or within such further time as the Commission may permit, each registrant shall either satisfy the complaint or answer it in writing.

(a) *Satisfaction of Complaint.* A registrant may satisfy the complaint by paying to the complainant either the amount to which the complainant claims to be entitled as set forth in the complaint or such other amount as the complainant will accept in satisfaction of his claim. If a complaint is satisfied, a notice of satisfaction and withdrawal of the complaint as to that registrant, duly executed by the complainant and registrant before a notary public, shall be filed with the Commission in substantially the following form:

[Caption]

Registrant _____, having satisfied the reparation complaint filed against him on _____, by _____,
[Name] [Date] [Name]
that complaint is hereby withdrawn. Registrant, by satisfying that complaint neither admits nor denies violating any provision of the Commodity Exchange Act, as amended, or any rule, regulation or order thereunder.

_____
Complainant

_____
Registrant

[Jurat]

If the complainant should fail or refuse to execute a notice of satisfaction and withdrawal of the complaint after the registrant has paid the complainant the amount to which the complainant has claimed to be entitled, the registrant may serve upon the complainant and file with the Commission an affidavit of satisfaction setting forth facts showing that the payment has been made. Upon the filing of a notice of satisfaction and withdrawal of the complaint as to a registrant, the proceeding shall be discontinued as to that registrant and no reparation award shall thereafter be entered against that registrant in favor of that complainant based upon the violations alleged in that complaint. In the absence of objection thereto by the complainant, an affidavit of satisfaction shall have the same effect as a notice of satisfaction and withdrawal of the complaint.

(b) *Answer*—(1) *Form and content.* The answer shall contain a precise and detailed statement of the facts which constitute the grounds for defense, and shall specifically admit, deny, or explain each of the allegations of the complaint. If the registrant is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and this will have the effect of a denial. An answer may state that the registrant admits all of the allegations of the complaint, or admits liability for a portion, but not all, of the amount claimed as damages. Each answer shall be signed personally by an individual registrant or by a duly authorized officer or agent of the registrant (who has knowledge of the matters set forth in the complaint) if the registrant is not a natural person. His signature shall be given under oath attesting that he has read the answer; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. Where a complainant alleges facts tending to prove that one or more employees or agents of a registrant have participated in the alleged violations, they shall each separately subscribe to and verify the answer or state under oath, in a document appended to the answer, why they have not done so. To the extent that the pleading is not based upon his personal knowledge he shall set forth with particularity the information upon which he believes there is good ground to support the answer. A true copy of each and every document possessed by or available to the registrant, which support the denials or other matters of defense set forth in the answer, shall be annexed to the answer unless they have been annexed to the complaint.

(2) *Counterclaims.* An answer may set forth as a counterclaim facts alleging a violation and a request for a reparation award that would be a proper subject for a complaint under § 12.21 or any claim which at the time the complaint is served the registrant has against the complainant if it arises out of the transaction or occurrence or series of transactions or occurrences set forth in the complaint.

(3) *Affidavit of service.* The registrant shall file with his answer an affidavit showing that he has served a true copy of the answer upon the complainant, either personally or by mail addressed to the complainant at the address set forth in the complaint.

§ 12.24 Reply.

If the answer asserts a counterclaim, the complainant shall file a reply to the counterclaim with the Commission within thirty (30) days after service of the answer. The reply shall be strictly confined to the matters alleged in the counterclaim, and shall in all respects conform to the requirements set forth in § 12.23(b) with respect to the form and content and other requirements concerning an answer. A complainant may satisfy a counterclaim, as if it were a complaint, in the manner set forth in § 12.23(a).

§ 12.25 Investigation of complaint.

If there appears to be, in the opinion of the Commission, any reasonable grounds for investigating any complaint made in accordance with § 12.21 the Commission may investigate such complaint to the extent and in such manner as it, in its sole discretion, may deem appropriate. If an investigation is undertaken, the Commission may, in its discretion, for that reason delay institution of a formal reparation proceeding.

§ 12.26 Effect of failure to file answer or reply; default.

(a) *Findings and conclusions.* Failure timely to file an answer to a complaint or a reply to a counterclaim shall be treated as an admission of the allegations of the complaint or counterclaim, shall constitute a waiver of hearing on the facts set forth in the complaint or counterclaim, and shall result in the institution of a formal adjudicatory proceeding in accordance with § 12.31 upon the payment of the appropriate filing fee set forth in § 12.27 by either the complainant or registrant. The previously

forwarded complaint, and the answer if no reply has been filed to a counterclaim set forth in the answer, shall be deemed to have been served for purposes of the institution of a formal adjudicatory proceeding. The proceeding shall be docketed in accordance with § 12.41 and a Presiding Officer shall be appointed in accordance with § 12.42. The Presiding Officer may thereafter, upon the motion of the complaining party, enter findings and conclusions concerning the questions of violation and damages and may enter an appropriate reparation award. If the facts which are treated as admitted are considered insufficient to support the amount of reparations sought, the proceeding may continue on the question of damages only.

(b) *Setting Aside of Default.* In order to prevent injustice and on such conditions as may be appropriate, the Presiding Officer may at any time for good cause set aside a default order or award obtained under paragraph (a) of this § 12.26. Any motion to set aside such a default order shall be made within a reasonable time, and shall state the reasons for the failure to file and specify the nature of the proposed defense in the proceeding.

§ 12.27 Filing fees.

(a) Prior to the institution of a formal adjudicatory proceeding in accordance with § 12.31, the Commission shall serve upon the complainant and registrant a notice informing the parties that the Commission is of the opinion that the facts warrant the institution of a formal adjudicatory proceeding. In the event such notice is sent, a formal adjudicatory proceeding shall commence upon payment by the complainant, within a reasonable period of time, of a filing fee of $25.00 for complaints claiming damage of $2,500 or less, $50.00 for complaints claiming damage in excess of $2,500 but less than $10,000 and $100 for complaints claiming damages in excess of $10,000.

(b) Payment of all filing fees shall be by check or money order, payable to the Treasury of the United States.

Subpart C—Institution and Settlement of Formal Adjudicatory Proceeding

§ 12.31 Institution of formal adjudicatory proceeding.

If in the Commission's opinion the facts warrant such action and upon the payment of the filing fee required by § 12.27, the Commission may, in its discretion, in the manner prescribed in § 12.48, notify the respondent and complainant, by registered or certified mail, that the Commission has instituted a formal adjudicatory proceeding based on the previously forwarded complaint, answer and reply, if any, and that the respondent shall have an opportunity for hearing thereon before an Administrative Law Judge designated by the Commission in a place in which the respondent is engaged in business with due regard given to the convenience of the parties: *Provided,* That in complaints wherein the amount claimed as damages does not exceed the sum of $2,500, a hearing need not be held and proof in support of the complaint and in support of the respondent's answer may be supplied in the form of depositions or verified statements of fact in accordance with the summary procedures set forth in § 12.91 through § 12.95 below and notice of the summary procedure will be given in lieu of an opportunity for hearing. A formal reparation proceeding is commenced when a complaint is served in the manner prescribed in this section.

§ 12.32 Discontinuance of proceeding.

If the Commission should determine not to proceed in the manner set forth in § 12.31 above, the reparation proceeding shall terminate without prejudice to the right of the complainant to seek such alternative forms of relief as may be available to him. If the proceeding should be discontinued the Commission shall promptly give notice to that effect to the complainant by registered or certified mail.

§ 12.33 Admissions of partial liability.

If in the answer the respondent admits liability for a portion, but not all of the amount claimed as damage, and the answer does not assert a counterclaim, the Presiding Officer may, unless the respondent has already made reparation, issue an order directing the respondent to pay the undisputed amount on or before a date fixed in the order. Thereafter liability with respect to the remaining disputed amount shall be determined in accordance with the procedure that would have been followed if no order had been issued by the Presiding Officer with respect to the undisputed sum. If in the reply the complainant admits liability for a portion but not all of the amount claimed as damage, the Presiding Officer may enter an award for that amount and issue an order directing the complainant to pay the undisputed amount on or before a date fixed by the order.

§ 12.34 Settlement—Statements of satisfaction and discontinuance of proceedings.

If, at any time before there has been a final determination by the Commission, the respondent satisfies the complaint, or the complainant and respondent reach an accord as to the amount of damages that will satisfy the complaint and any counterclaim set forth in the respondent's answer, the complainant and respondent shall file with the Commission a signed statement of satisfaction and discontinuance of proceeding. The proceeding will thereafter be discontinued. The statement of satisfaction and discontinuance of proceeding shall be filed with the Commission in substantially one of the following forms:

[Caption]
Respondent _____ having satisfied the reparation complaint against
[*Name*]
him on _____ by _____
[*Date*] [*Name*]
_____, that the complaint is hereby withdrawn.

_____
Complainant

_____
Respondent

[Jurat]

or

[Caption]
Respondent _____ having satisfied the reparation complaint filed
[*Name*]
against him on _____, by _____
[*Date*] [*Name*]
_____, and the complainant _____
[*Name*]
_____ having satisfied the counterclaim asserted against him in respondent's answer filed with the Commission on _____ the complaint and counter-
[*Date*]
claim are hereby withdrawn.

_____
Complainant

_____
Respondent

[Jurat]

If after satisfaction of the complaint or counterclaim the complaining party refuses to sign a Statement of Satisfaction and Discontinuance, a party who has satisfied a claim against him may file with the Commission and serve on the other party a motion for discontinuance to be accompanied by an affidavit setting forth in detail the facts surrounding the satisfaction or a copy of any stipulation entered into by the parties evidencing satisfaction of the complaint or counterclaim. If the motion is uncontested the proceeding will be ordered discontinued.

Subpart D—Formal Adjudicatory Proceeding

§ 12.41 Docketing of proceeding.

Upon service of the notification in accordance with § 12.31, or upon a default or admission of partial liability as set forth in § 12.26 or § 12.33 the Hearing Clerk shall assign a docket number to the proceeding and maintain the official docket. Thereafter the proceeding may be identified by such number.

§ 12.42 Assignment to Presiding Officer.

Immediately following docketing of the proceeding, the proceeding shall be assigned to the Presiding Officer. To the extent permitted by law, the powers hereinafter conferred upon the Presiding Officer shall be applicable to the Commission.

§ 12.43 Functions and responsibilities of the Presiding Officer.

The Presiding Officer shall be responsible for the fair and orderly conduct of the proceeding and shall have the authority to:

(a) Administer oath and affirmations;
(b) Issue subpoenas;
(c) Rule on offers of proof;

(d) Receive relevant evidence;

(e) Examine witnesses;

(f) Regulate the course of the hearing;

(g) Hold prehearing conferences;

(h) Consider and rule upon all motions;

(i) Make decisions in accordance with § 12.84 and § 12.95;

(j) Certify interlocutory matters to the Commission for its determination in accordance with § 12.47(a) (4);

(k) Take such action as is appropriate if a party or agent of a party fails to comply with an order issued by the Presiding Officer; and

(l) Take any other action required to give effect to these rules relating to reparation proceedings, including but not limited to requesting the parties to file briefs and statements of position with respect to any issue in the proceeding.

§ 12.44 Disqualification of Presiding Officer.

(a) *At His Own Request.* A Presiding Officer may withdraw from any proceeding when he considers himself to be disqualified. In such event he shall immediately notify the Commission and each of the parties of his withdrawal and of his reason for such action.

(b) *Upon the Request of a Party.* Any party may request a Presiding Officer to disqualify himself on the grounds of personal bias, conflict or similar bases. Interlocutory review of an adverse ruling by the Presiding Officer may be sought without certification of the matter by the Presiding Officer only in accordance with the procedures set forth in § 12.47 (b).

§ 12.45 Amendments and supplemental pleadings.

(a) *Amendments.* At any time prior to the close of the hearing in a reparation proceeding, the Presiding Officer may allow amendments of the pleadings either upon written consent of the parties or for good cause shown.

(b) *Supplemental Pleadings.* Upon reasonable notice, and upon such terms as are just, the Presiding Officer may, upon the motion of a party, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleadings sought to be supplemented and which are relevant to any of the issues involved.

(c) *Response to Amendments and Supplements.* Any party may file a response to any amendment or supplement to a pleading within ten (10) days after date of service upon him of the amendment or supplement.

(d) *Pleadings to Conform to the Evidence.* When issues not raised by the pleadings but reasonably within the scope of a reparation proceeding initiated by the complaint are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

(e) *Subscription and Verification.* All amendments and supplemental pleadings shall be subscribed and verified in the same manner as the pleadings they are amending or supplementing.

§ 12.46 Motions.

(a) *Presentation.* An application for a form of relief not otherwise specifically provided for in these rules shall be made by a motion, which shall be in writing unless made on the record during a hearing. The motion shall state: (1) The relief sought; (2) the basis for relief; and (3) the authority relied upon. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. All motions and applications, unless otherwise provided in these rules, shall be directed to the Presiding Officer prior to the filing of an initial decision in a proceeding, and to the Commission after the initial decision has been filed.

(b) *Answer to Motions.* Any party may serve and file a written response to a motion within ten (10) days after service of the motion upon him or within such longer or shorter period as established by these rules or as the Presiding Officer or the Commission may direct. Any party who does not file a response to a motion shall be deemed to have consented to the relief sought by the motion.

(c) *Motions for Procedural Orders.* Motions for procedural orders, including motions for extension of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

(d) *Dilatory Motions.* Repetitive or numerous motions dealing with the same subject matter shall not be permitted.

§ 12.47 Interlocutory review by the Commission.

Interlocutory review by the Commission of a ruling on a motion by a Presiding Officer may be sought in accordance with the following procedure:

(a) *Scope of review.* The Commission will not review a ruling of the Presiding Officer prior to the Commission's consideration of the proceeding in the absence of extraordinary circumstances. An interlocutory appeal may be permitted, in the discretion of the Commission, under the following circumstances:

(1) Appeal from a ruling pursuant to § 12.44 on a motion to disqualify a Presiding Officer.

(2) Appeal from a ruling pursuant to § 12.11 suspending an attorney from participation in a reparation proceeding.

(3) Appeal from a ruling pursuant to § 12.72 ordering consolidation of proceedings.

(4) Upon a determination by the Presiding Officer certified to the Commission either in writing or on the record, that (i) a ruling sought to be appealed involves a controlling question of law or policy, (ii) an immediate appeal may materially advance the ultimate resolution of the issues in the proceeding, (iii) subsequent reversal of the ruling would cause unnecessary delay or expense to the parties.

(b) *Procedure to obtain interlocutory review.* (1) An application for interlocutory review may be served and filed within five (5) days after notice of the Presiding Officer's ruling on a matter described in § 12.47(a) (1), (2) or (3) or within five (5) days after a determination is made by a Presiding Officer in the manner described in § 12.47(a) (4).

(2) An application for review shall:

(i) Designate the ruling or part thereof from which appeal is being taken;

(ii) Present the points of fact and law relied upon in support of the position taken; and

(iii) Not exceed 15 pages.

(3) Any party that opposes the application may file a response, not to exceed 15 pages, within five (5) days after service of the application.

(4) The Commission will determine whether to grant a review based upon the application for review and the response thereto, without oral argument or further written presentation, unless the Commission shall otherwise direct.

(c) *Proceedings not stayed.* The filing of an application for review and the grant of review shall not stay proceedings before a Presiding Officer unless the Presiding Officer or the Commission shall so order. The Commission will not consider a motion for a stay unless the motion shall have first been made to the Presiding Officer and denied.

§ 12.48 Service.

(a) *Number of copies; when required.* Two copies of all pleadings, motions, petitions or applications made in the course of a proceeding (unless made orally during a hearing), all proposed findings and conclusions, all petitions for review of any initial decision, and all briefs shall be served by the party upon all parties to the proceeding.

(b) *How service is made.* Service shall be made either by personal service or by first-class mail. Service shall be complete at the time of personal service or upon deposit in the mails of a properly addressed and post-paid document. Where a party effects service by mail, the time within which the person served may respond thereto shall be increased by three (3) days.

(c) *Proof of service.* Proof of service of a document shall be made by filing with the Hearing Clerk, simultaneously with the filing of the required number of copies of the document, an affidavit of service executed by any person 18 years of age or older or a certificate of service executed by an attorney-at-law qualified to practice before the Commission. The proof of service shall identify the persons served, state that service has been made, set forth the date of service, and recite the manner of service.

§ 12.49 Service of decisions and orders.

A copy of all rulings, opinions and orders of the Presiding Officer and the Commission shall be served by the Hearing Clerk on each of the parties.

§ 12.50 Designation of person to receive service.

The first document filed in a proceeding by or on behalf of any party subsequent to formal service of the complaint

shall state on the first page thereof the name and post office address of the person who is authorized to receive service for him of all documents filed in the formal proceeding. Thereafter, service of documents shall be made upon the person authorized unless service on the party himself is ordered by the Presiding Officer or the Commission, or unless no person authorized to receive service can be found or unless the person authorized is changed by the party upon due notice to all other parties.

§ 12.51 Filing of documents with the Hearing Clerk.

All documents which are required to be served upon a party shall be filed concurrently with the Hearing Clerk. A document shall be filed by delivering it in person or by certified or registered mail with return receipt requested to:

Hearing Clerk, Office of Hearings and Appeals, Commodity Futures Trading Commission, 1120 Connecticut Avenue, NW., Washington, D.C. 20036.

To be timely filed a document must be received by the Hearing Clerk within the time prescribed for filing.

§ 12.52 Formalities of filing.

(a) *Number of copies.* Unless otherwise specifically provided, an original and five conformed copies of all documents shall be filed with the Hearing Clerk.

(b) *Title page.* All documents filed with the Hearing Clerk must include at the head thereof, or on a title page, the name of the Commission, the docket number and title of the proceeding, the subject of the particular document and the name of the person in whose behalf the document is being filed. In the complaint the title of the action shall include the names of all the complainants and respondents, but in documents subsequently filed it is sufficient to state the name of the first complainant and first respondent named in the complaint with an appropriate indication of other parties.

(c) *Paper, spacing, type.* All documents filed under this Part shall be typewritten, mimeographed, printed, or otherwise reproduced by a process that produces permanent and plainly legible copies, shall be on one grade of good unglazed white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 14 inches long and shall be bound on the top only. They shall be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced. If printed, the documents shall be in either 10- or 12-point type with double-leaded text and single-leaded quotations and footnotes.

(d) *Signatures.* The original copy of all papers must be signed in ink by the person filing the same or by his duly authorized agent or attorney.

(e) *Length and form of briefs.* All briefs filed with the Hearing Clerk containing more than 10 pages shall include an index and a table of cases and other authorities cited. The date of each brief must appear on its front cover or title page and on its signature page. No brief shall exceed 60 pages in length, except with the permission of the Presiding Officer or, by the Commission, to whomever the brief is directed.

§ 12.53 Subscription.

(a) *By whom.* Motions and answers thereto, briefs and other documents filed with the Commission shall be subscribed:

(1) By the person or persons on whose behalf they are tendered for filing;

(2) By a partner, officer or director of a partnership, corporation, association, or other legal entity; or

(3) By an attorney-at-law having authority with respect thereto.

The Hearing Clerk may require appropriate evidence the authority of a person subscribing a document on behalf of another person.

(b) *Effect.* The signature on any document of any person acting either for himself or as attorney or agent for another constitutes certification by him that:

(1) He has read the document subscribed and knows the contents thereof;

(2) If executed in any representative capacity, it was done with full power and authority to do so;

(3) To the best of his knowledge, information and belief, every statement contained in the document is true and not misleading; and

(4) The document is not being interposed for delay.

(c) *Sham documents.* If a document is not signed or is signed with an intent to defeat the purpose of this rule, it may be stricken as sham and false. For a willful violation of this rule an attorney or representative for any party may be subjected to appropriate disciplinary action pursuant to § 12.11. Similar action may be taken if scandalous matter is inserted.

Subpart E—Prehearing Conferences and Discovery

§ 12.61 Conferences; procedural matters.

(a) In any proceeding the Administrative Judge may direct that one or more conferences be held for the purpose of:

(1) Clarifying issues;

(2) Examining the possibility of obtaining stipulations, admissions of fact and of authenticity of contents of documents;

(3) Determining matters of which official notice may be taken;

(4) Discussing amendments to pleadings;

(5) Limiting the number of witnesses;

(6) Promoting a fair and expeditious hearing.

At or following the conclusion of a prehearing conference, the Administrative Law Judge shall serve a prehearing memorandum containing agreements reached and any procedural determinations made by him, unless the conference shall have been recorded and transcribed in written form and a copy of the transcript has been made available to each party.

§ 12.62 Discovery.

(a) *Methods.* Parties may obtain discovery of a party or an officer or agent of a party by the following methods in accordance with the procedures set forth in the section indicated:

(1) Production of documents or other items (§ 12.63);

(2) Depositions on written interrogatories (§ 12.64);

(3) Admissions (§ 12.65).

(b) *Scope.* The scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter in the pending proceeding, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Protective orders.* Upon motion directed to the Presiding Officer by a party or by the person from whom discovery is sought, and for good cause shown, any order which justice requires may be issued to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding, or the inappropriate disclosure of trade secrets or sensitive commercial or financial information. Relief through a protective order may include one or more of the following:

(i) That discovery not be had;

(ii) That discovery may be had only on specified terms and conditions;

(iii) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(iv) That a trade secret or other confidential commercial information not be disclosed or be disclosed only in a designated way;

(v) That the parties simultaneously file specified documents or information in sealed envelopes to be opened only as directed by the Presiding Officer or the Commission.

(c) *Time limit.* Discovery by all parties will be completed within such time as the Presiding Officer directs from either the date the answer is served on complainant or the date the reply is served on the respondent if the answer contains a counterclaim.

§ 12.63 Production of documents and tangible things.

Any party, within the time prescribed for discovery by the Presiding Officer, may serve on any other party, a notice to produce copies of specifically designated categories of documents, papers, books, accounts, letters, photographs, objects, or tangible things which would constitute or contain evidence relating to any matter, which is relevant to the subject matter involved in the pending proceed-

ing, and which is in the party's possession, custody or control. A copy of the notice shall be served on all other parties to the proceeding. All documents requested in the notice to produce shall be served on the party seeking the discovery within twenty (20) days after service of the notice to produce.

§ 12.64 Depositions on written interrogatories.

(a) *Notice.* Any party, within the time prescribed for discovery by the Presiding Officer, may serve on any other party or any officer or agent of a party a notice of the taking of a deposition on written interrogatories.

(b) *Reply.* (1) Each interrogatory served shall be answered by the party served or if the party is a corporation, partnership, association, or government agency, by any officer or agent thereof selected by the responding party.

(2) Each interrogatory shall be answered separately and fully in writing, unless objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed and verified by the person making them. The person upon whom a notice to take a deposition on written interrogatories have been served shall serve a copy of the answers and objections within the time period designated by the party submitting the interrogatories but not less than twenty (20) days after service thereof.

(c) *Deposition of a non-party.* The deposition on written interrogatories of a non-party may be taken only within the time prescribed for discovery by the Presiding Officer and only pursuant to an order entered and subpoena issued by the Presiding Officer in accordance with the provisions of § 12.74; *Provided,* That the deposition on written interrogatories of a Commission member or employee may only be taken upon a showing that the Commission member or employee has personal knowledge of the matters sought to be discovered (i.e., not obtained pursuant to a Commission investigation), that the information sought to be discovered is relevant and material and that the information sought to be discovered is not available from other sources.

(d) *Use of depositions on written interrogatories at hearings.* Depositions on written interrogatories may be used against the responding party, except that objection may be made at the hearing to receiving in evidence any interrogatory for any reason which would require the exclusion of the evidence if the party was then present and testifying.

§ 12.65 Admissions.

(a) *Request for admissions.* Any party may serve upon any other party a written request for admission of the truth of any matters relevant to the pending proceeding 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. A copy of the request shall be filed with the Hearing Clerk.

(b) *Reply.* Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the Presiding Officer may allow, the party upon whom the request is directed serves upon the party requesting the admission a sworn written answer or objection to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission and when good faith requires that a party qualify his answer and deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give a lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or reasonably available to him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may deny the matter or set forth reasons why he cannot admit or deny it.

(c) *Determining sufficiency of answers or objections.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains his burden of showing that the objection is justified, the 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, he may order either that the matter is admitted or that an amended answer be served.

(d) *Effect of admission.* Any matter admitted under this rule is conclusively established and may be used at hearing as against the party who made the admission. However, the Presiding Officer may permit withdrawal or amendment when the presentation of the merits of the proceeding will be served thereby and the party who obtains the admission fails to satisfy the Presiding Officer that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits.

§ 12.66 Consequences of the failure of a party to comply with a discovery notice or request.

If a party or an officer or agent of a party fails to comply with a notice relating to discovery the Presiding Officer may take such action in regard thereto as is just, including but not limited to the following:

(a) Infer that the testimony or documents would have been adverse to the party;

(b) Rule that for the purposes of the proceeding the matter or matters sought to be discovered be taken as established adversely to the party;

(c) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer, or agent, or the documents or other evidence;

(d) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(e) Rule that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which discovery was sought, be stricken, or that a decision of the proceeding be rendered against the party, or both. It shall be the duty of parties to seek by motion and Presiding Officer to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony or documents or other evidence.

Subpart F—Hearings

§ 12.71 Oral hearings.

(a) *When required:* (1) Where the amount of damages claimed, either in the complaint or in a counterclaim, is in excess of $2,500, a hearing shall be held in accordance with the procedure set forth in this section unless all the parties have waived their right to a hearing.

(2) Where the amount of damages claimed, either in the complaint or in a counterclaim, does not exceed $2,500, an oral hearing shall not be held, unless ordered by the Commission either on its own motion or upon application by a party setting forth the particular circumstances making an oral hearing necessary for a proper resolution of the issues.

(3) In all cases in which a hearing is not held the procedures set forth in §§ 12.91 through 12.95 shall apply.

(b) *Who may appear.* The parties may appear in person, by counsel or by other representatives of their choosing, subject to the provisions of § 12.11 of these rules, dealing with appearance and practice before the Commission.

(c) *Effect of failure to appear.* (1) If any party to the proceeding, after filing an answer fails to appear at the hearing or any part thereof, he shall to that extent be deemed to have waived the right to an oral hearing in the proceeding. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present may present his evidence, in whole or in part, in the form of affidavits or by oral testimony, before the Administrative Law Judge.

(2) A failure to appear at a hearing shall not constitute a waiver of a party's right to propose findings of fact based on the record in the proceeding, to propose conclusions of law or to submit briefs, in the manner provided in § 12.82, if the non-appearing party submits prior to the scheduled hearing or within three (3) days thereafter, a Notice of Appearance indicating his intent to continue to participate in the proceeding. Otherwise, his failure to appear will constitute a default and a default order may be sought in accordance with the procedures set forth in § 12.26 of these rules.

(d) *Time and place.* If and when the proceeding has reached the stage of oral hearing, the Administrative Law Judge, giving careful consideration to the convenience of the parties, shall set a time for hearing and shall file with the Hearing Clerk a notice stating the time and place of a hearing. Unless the parties otherwise agree, the place of hearing shall be in a place where the respondent is engaged in business, with due regard given to the convenience of the parties. If any change in the time or place of the hearing becomes necessary, it shall be made by the Administrative Law Judge, who, in such event, shall file with the Hearing Clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

§ 12.72 Consolidations.

(a) Where two or more reparation proceedings are based upon complaints alleging substantially similar activities by a respondent affecting the several complainants, the Chief Administrative Law Judge may, upon application of any party to any of the proceedings or the Commission, join those proceedings for hearing of any or all the matters in issue or may consolidate those proceedings.

(b) Where joinder or consolidation has been ordered, the Administrative Law Judge may make such rulings concerning the conduct of the proceedings as may be necessary to avoid unnecessary costs or delay or prejudice to the participants to the reparation proceeding.

(c) Any party to a reparation proceeding which is consolidated pursuant to this section may seek interlocutory review by the Commission of the order of consolidation in accordance with the procedure set forth in § 12.47(b).

§ 12.73 Public hearings.

All hearings shall be public except that upon application of a respondent or affected witness the Administrative Law Judge may direct that specific documents or testimony be received and retained non-publicly in order to prevent unwarranted disclosure of trade secrets or sensitive commercial or financial information or an unwarranted invasion of personal privacy.

§ 12.74 Subpoenas.

(a) *Application for and Issuance of Subpoenas*—(1) *Application for and issuance of Subpoena Ad Testificandum.* An application for a subpoena requiring a person to appear and testify at a reparation proceeding (subpoena ad testificandum) may be made, either orally or in writing by any party without notice to other parties. The application shall be made to the Administrative Law Judge or in the event that the Administrative Law Judge is not available, to the Chief Administrative Law Judge. Subject to § 12.74(a)(4) a subpoena shall be issued upon the request of any interested party upon tender of an original and two copies of such subpoena.

(2) *Application for Subpoena Duces Tecum.* An application for a subpoena requiring a person to appear and testify and to produce specified documentary or tangible evidence at a reparation proceeding (subpoena duces tecum) shall be submitted in duplicate and in writing, but need not be served upon all other parties. All such applications shall contain a statement or showing of general relevance and reasonable scope of the evidence sought and shall be accompanied by an original and two copies of the subpoena sought which shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible. Notwithstanding the foregoing, for good cause shown application for a subpoena duces tecum may be made orally during the course of a hearing on the record to the Administrative Law Judge.

(3) *Standards for issuance of Subpoena Duces Tecum.* The Administrative Law Judge considering any application for a subpoena duces tecum shall issue the subpoena requested if he is satisfied the application complies with this section and the request is not unreasonable, oppressive, excessive in scope or unduly burdensome. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena duces tecum and no detailed or burdensome showing shall be required as a condition to the issuance of any subpoena.

(4) *Denial of application.* In the event the Administrative Law Judge determines that a requested subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena, or may issue it only upon such conditions as he determines fairness requires.

(5) *Attendance and mileage fees.* Persons summoned to testify at a hearing under requirement of subpoenas are entitled to the same fees and mileage as are paid to witnesses in the courts of the United States. Fees and mileage shall be paid by the party at whose instance the persons are called.

(b) *Special requirements relating to application for and issuance of subpoenas for Commission records and for the appearance of Commission employees*—(1) *Form.* An application for the issuance of a subpoena shall be made in the form of a written motion served upon all other parties, if the subpoena would require (i) the production of documents, papers, books, physical exhibits, or other material in the records of the Commission; or (ii) the appearance of a Commissioner or an official or employee of the Commission.

(2) *Content.* The motion shall specifically describe the material to be produced, the information to be disclosed, or the testimony to be elicited from the witness, and shall show (i) the relevance of the material, information, or testimony to the matters at issue in the proceeding; (ii) the reasonableness of the scope of the proposed subpoena; and (iii) that such material, information, or testimony is not available from other sources.

(3) *Rulings.* The motion shall be decided by the Administrative Law Judge or in the event the Administrative Law Judge is not available, by the Chief Administrative Law Judge, and shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the witness as may appear necessary and appropriate for the protection of the public interest.

§ 12.75 Motions to quash subpoena.

(a) *Application.* Any person upon whom a subpoena has been served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpoena with the Presiding Officer who issued the subpoena, and serve a copy of such motion upon the party requesting the subpoena. The application shall be accompanied by a brief statement of the reasons therefor. If the Presiding Officer to whom the motion has been directed has not acted upon the motion by the return date, the subpoena date shall be stayed pending his final action.

(b) *Disposition.* After due notice to the person upon whose request the subpoena was issued, and after opportunity for response by that person, the Presiding Officer may (1) quash or modify the subpoena, or (2) condition denial of the application to quash or modify the subpoena upon just and reasonable terms, including, in the case of a subpoena duces tecum, a requirement that the person in whose behalf the subpoena was issued shall advance the reasonable cost of producing documentary or other tangible evidence.

§ 12.76 Service of subpoenas.

(a) *How effected.* Service of a subpoena upon a party shall be made in accordance with § 12.48 except that only one copy of a subpoena need be served. Service of a subpoena upon any other person shall be made by delivering a copy of the subpoena to him as provided in paragraph (b) or (c) of this section and by tendering to him the fees for one day's attendance and the mileage as specified in § 12.74(a)(5). When the subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service.

(b) *Service Upon a Natural Person.* Delivery of a copy of a subpoena and tender of fees and mileage to a natural person may be effected by (1) handing

them to the person; (2) leaving them at his office with the person in charge thereof or, if there is no one in charge, by leaving them in a conspicuous place therein; (3) leaving them at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; (4) mailing them by registered or certified mail to him at his last known address; or (5) any other method whereby actual notice is given to him and the fees and mileage are timely made available.

(c) *Service Upon Other Persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees and mileage may be effected by (1) handing them to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; (2) mailing them by registered or certified mail to any such representative at his last known address; or (3) any other method whereby actual notice is given to any such representative and the fees and mileage are timely made available.

§ 12.77 Enforcement of subpoenas.

Upon failure of any person to comply with a subpoena issued at the request of a party, that party may petition the Commission in its discretion to institute an action in an appropriate United States District Court for enforcement of that subpoena.

§ 12.78 Record of hearing.

(a) *Reporting and Transcription.* Hearings for the purpose of taking evidence shall be recorded and shall be transcribed in written form under the supervision of the Administrative Law Judge by a reporter employed by the Commission for that purpose. The original transcript shall be a part of the record and shall be the sole official transcript. Copies of transcripts, except those portions granted non-public treatment, shall be available from the reporter at rates not to exceed the maximum rates fixed by the contract between the Commission and the reporter.

(b) *Corrections.* Any party may submit a timely request to the Administrative Law Judge to correct the transcript. Corrections may be submitted to the Administrative Law Judge by stipulation of the parties, or by motion by any party, and upon notice to all parties to the proceeding, the Administrative Law Judge may specify corrections of the transcript. A copy of such specification shall be furnished to all parties and made a part of the record. Corrections shall be made by the official reporter, who shall furnish substitute pages of the transcript, under the usual certificate of the reporter, for insertion in the official record. The original uncorrected pages shall be retained in the files of the Hearing Clerk.

§ 12.79 Conduct of the Hearing.

(a) *Expedition.* Hearings shall proceed expeditiously and insofar as practicable hearings shall be held at one place and shall continue, without suspension, until concluded.

(b) *Rights of Parties.* Every party shall be entitled to due notice of hearings, the right to be represented by counsel, the right to cross-examine witnesses, present oral and documentary evidence, raise objections, make arguments and move for appropriate relief.

(c) *Examination of Witnesses.* All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation, which shall be administered by the Administrative Law Judge. A witness may be cross-examined by each adverse party and, in the discretion of the Administrative Law Judge, may be cross-examined, without regard to the scope of direct examination, as to any matter which is relevant to the issues in the proceeding.

(d) *Exhibits.* The original of each exhibit introduced in evidence or marked for identification shall be filed and retained in the docket of the proceeding, unless the Administrative Law Judge permits the substitution of copies for the original documents. A copy of each exhibit introduced by a party or marked for identification at his request shall be supplied by him to the Administrative Law Judge and to each other party to the proceeding.

§ 12.80 Evidence.

(a) *Admissibility.* Relevant, material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable and unduly repetitious evidence shall be excluded.

(b) *Official notice.* (1) Official notice may be taken of

(i) Any material fact which might be judicially noticed by a district court of the United States; or

(ii) Any matter in the public official records of the Commission.

(2) If official notice is requested or taken of a material fact, any party, upon timely request, shall be afforded an opportunity to establish the contrary.

(c) *Objections.* A party shall timely and briefly state the grounds relied upon for any objection made to the introduction of evidence. If a party has had no opportunity to object to a ruling at the time it is made, he shall not thereafter be prejudiced by the absence of an objection.

(d) *Exceptions.* Formal exception to an adverse ruling is not required. It shall be sufficient that a party, at the time the ruling is sought or entered, makes known to the Administrative Law Judge the action he wishes the Administrative Law Judge to take or his objection to the action being taken and his grounds therefor.

(e) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness, or the Administrative Law Judge may, in his discretion, receive the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(f) *Affidavits.* Affidavits may be admitted by the Administrative Law Judge only if the evidence is otherwise admissible and the parties agree that affidavits may be used.

(g) *Stipulations.* Stipulations may be received in evidence at a hearing and when received in evidence shall be binding on the parties thereto.

(h) *Official government records.* An official government record or any entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record or by his deputy, accompanied by a certificate that such officer has custody. If the office in which the record is kept is within the United States the certificate may be made by a judge of a court of record in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by any officer in the Foreign Service of the United States stationed in the foreign state or country in which the record is kept and authenticated by the seal of his office. A written statement signed by an officer having custody of an official record or by his deputy, that after diligent search, no record or entry dealing with a specific matter is found to exist, accompanied by a certificate as provided above, is admissible as evidence that the records of his office contain no such record or entry.

(i) *Entries in the regular course of business.* Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it shall appear that it was made in the regular course of business by a person who had a duty to report or record it.

§ 12.81 Filing the transcript of evidence.

As soon as practicable after the close of the hearing, the reporter shall transmit to the Hearing Clerk the transcript of the testimony and the exhibits introduced in evidence at the hearing, except such portions of the transcript and exhibits as shall have been delivered to the Administrative Law Judge.

§ 12.82 Proposed findings and conclusions; briefs.

In any proceeding involving a hearing or an opportunity for hearing, the parties may file written proposed findings and conclusions of law. Briefs may be filed in support of proposed findings either as part of the same document or in a separate document. Any proposed finding or conclusion not briefed may be regarded as waived.

(a) *Proposed Findings and Briefs; Time for Filing.* Where the parties file proposed findings and briefs, the following schedule shall apply, unless other-

wise determined by the Administrative Law Judge:

(1) *Initial submission.* Proposed findings, conclusions and an initial brief shall be served and filed by the complainant within forty-five (45) days of the close of the hearing;

(2) *Answering submission.* Proposed findings, conclusions, and an answering brief shall be served and filed by the respondents within thirty (30) days after service of the initial conclusions and brief upon the respondents;

(3) *Reply.* A reply brief may be filed by the complainant within fifteen (15) days after service of the answering brief.

(b) *Alternative procedures for submissions.* In his discretion the Administrative Law Judge may lengthen or shorten the periods for the filing of submissions, may direct simultaneous filings, may direct that respondents make the first filing, or many otherwise modify the procedures set forth in § 12.82(a) for purpose of a particular proceeding.

(c) *Briefs.* (1) The initial brief should include:

(i) A short, clear and concise statement of the case;

(ii) Specification of the questions intended to be urged; and

(iii) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question.

(2) The answering brief shall generally follow the same style as prescribed for the initial brief but may omit a statement of the case if the party does not dispute the statement of the case contained in the initial brief;

(3) Reply briefs should be limited to rebuttal of matters in the prior briefs.

(d) *Content and form of proposed findings and conclusions.* (1) The findings of fact shall be confined to the material issues of fact presented on the record, with exact citations to the transcripts of record and exhibits in support of each proposed finding.

(2) The proposed findings and conclusions of the party filing initially shall be set forth in consecutively numbered paragraphs and all counterstatements of proposed findings and conclusions shall, in addition to any other matter, indicate which paragraphs of the initial proposals are not disputed.

§ 12.83 Oral arguments.

In his discretion the Administrative Law Judge may hear oral arguments by the parties any time before he files his initial decision with the Hearing Clerk. The argument shall be recorded and transcribed in written form.

§ 12.84 Initial decision.

(a) *When initial decision is required.* The Administrative Law Judge shall make an initial decision in each reparation proceeding in which a hearing has been conducted.

(b) *Content of initial decision.* In his initial decision the Administrative Law Judge shall determine whether or not the respondent has violated any provision of the Act or any rule, regulation or order thereunder. If after a hearing, or upon failure of a respondent to appear at a hearing after being duly notified, the Administrative Law Judge determines that the respondent has violated any provision of the Act, or any rule, regulation, or order thereunder, the Administrative Law Judge shall, unless the respondent has already made reparation to the complainant, determine the amount of damage, if any, to which the complainant is entitled as a result of such violation and shall make an order directing the respondent to pay to the complainant such amount on or before a date fixed in the order.

(c) *Costs.* The Administrative Law Judge may, in the initial opinion, award costs (including the cost of instituting the proceeding, should the complainant prevail) to the party in whose favor a judgment is entered.

(d) *Filing of initial decision and order.* The Administrative Law Judge as soon as practicable after the final date allowed for filing proposed findings of fact and briefs, or such other time as may be allowed by the Chief Administrative Law Judge, or by the Commission, shall prepare upon the basis of the record and shall file with the Hearing Clerk his decision and order, a copy of which shall be served by the Hearing Clerk upon each of the parties.

(e) *Effect of initial decision.* The initial decision and order shall become the final decision and order of the Commission thirty (30) days after service thereof, except:

(1) The decision shall not become final as to a party who shall have filed an application for review in accordance with § 12.101, pending Commission disposition of the application or, if the application is granted, pending the final decision by the Commission upon review of the initial decision.

(2) The initial decision shall not become final as to any party to the proceeding if, within thirty (30) days after the initial decision, the Commission itself shall have placed the case on its own docket for review or stayed the effective date of the initial decision.

In the event that the initial decision becomes the final decision of the Commission with respect to a party, that party shall be duly notified thereof by the Hearing Clerk. The notice shall state that the time for filing an application for review by the party has expired, that the Commission has determined not to review the initial decision on its own initiative and shall specify the date on which a final order in the proceeding shall become effective as against that party.

Subpart G—Summary Proceedings

§ 12.91 Presiding Officer; evidence.

In all cases in which a hearing is not held, as provided in § 12.71:

(a) A Presiding Officer shall be appointed who is a member of the Commission, an Administrative Law Judge, a Hearing Officer or other such Commission employee as may be appointed by the Commission to conduct the proceeding; and

(b) Proof in support of the complaint and in support of the respondent's answers may be found in those verified documents and may also be supplied in the form of depositions or other verified statements of fact.

§ 12.92 Discovery.

Parties to a summary proceeding may obtain discovery by the methods and in the manner set forth above in §§ 12.62 through 12.66. Copies of all depositions upon written interrogatories and other verified statements obtained through discovery shall be filed in the proceeding by the party on whose behalf the discovery was obtained.

§ 12.93 Submission of evidence.

Each party shall serve and file those depositions and other verified statements of fact upon which he relies in support of his pleadings. Thereafter, the parties shall have fifteen (15) days to file replies to such submitted affidavits or verified statements of fact to which they have not previously replied. All such replies shall be confined to the matters set forth in the affidavits and verified statements of fact to which they are responsive.

§ 12.94 Proposed findings and conclusions; briefs.

The parties may file written proposed findings and conclusions and may file briefs under the same conditions as are set forth in § 12.82 with respect to proceedings involving a hearing or an opportunity for hearing.

§ 12.95 Initial decision.

(a) *When initial decision is required.* The Presiding Officer shall make an initial decision in each reparation proceeding not involving a hearing or an opportunity for hearing.

(b) *Content of initial decision.* In his initial decision the Presiding Officer shall determine whether or not the respondents have violated any provision of the Act or any rule, regulation or order thereunder. If on the basis of the verified pleadings, depositions and other verified documents designated by the parties, the Presiding Officer determines that the respondent has violated any provision of the Act, or any rule, regulation, or order thereunder, the Presiding Officer shall, unless the respondent has already made reparation to the complainant, determine the amount of damage, if any, to which the complainant is entitled as a result of such violation and shall make an order directing the respondent to pay to the complainant such amount on or before a date fixed in the order.

(c) *Costs.* The Presiding Officer may, in the initial opinion, award costs (including the cost of instituting the proceeding, should the complainant prevail) to the party in whose favor a judgment is entered.

(d) *Filing of initial decision and order.* The Presiding Officer as soon as

practicable after the final date allowed for filing proposed findings of fact and briefs, or such other time as may be allowed by the Chief Administrative Law Judge, or by the Commission, shall prepare upon the basis of the record and shall file with the Hearing Clerk his decision and order, a copy of which shall be served by the Hearing Clerk upon each of the parties.

(e) *Effect of initial decision.* The initial decision and order shall become the final decision and order of the Commission thirty (30) days after service thereof, except:

(1) The initial decision shall not become final as to a party who shall have filed an application for review in accordance with § 12.101, pending Commission disposition of the application or, if the application is granted, pending the final decision by the Commission upon review of the initial decision.

(2) The initial decision shall not become final as to any party to the proceeding if, within thirty (30) days after the initial decision, the Commission itself shall have placed the case on its own docket for review or stayed the effective date of the initial decision.

In the event that the initial decision becomes the final decision of the Commission with respect to a party, that party shall be duly notified thereof by the Hearing Clerk. The notice shall state that the time for filing an application for review by the party has expired, that the Commission has determined not to review the initial decision on its own initiative and shall specify the date on which a final order in the proceeding shall become effective as against that party.

Subpart H—Commission Review of Initial Decisions in Reparation Proceedings

§ 12.101 Application for Commission review.

Upon application for review by any party or upon its own motion the Commission may, in its discretion, grant review of an initial decision.

(a) *Applications and Responses.* (1) An application for Commission review of an initial decision must be served and filed in accordance with §§ 12.48 and 12.49 within fifteen (15) days after service upon the parties of the initial decision;

(2) An application for review shall (i) identify the party seeking review; (ii) specify the issues presented for review; (iii) identify those provisions of the Act or any rule, regulation or order thereunder that are relevant to the stated issues; (iv) set forth a concise statement of the facts material to the consideration of the stated issues; and (v) present a concise argument setting forth the reasons why review by the Commission is necessary or appropriate to resolve an important issue of law or public policy.

(3) Any party opposing the application may serve and file a response within fifteen (15) days after service of the application.

(4) An application shall not exceed 30 pages and a response shall not exceed 25 pages, without leave expressly granted by the Presiding Officer.

(5) After the time for the filing of a response has expired the Commission will determine whether to grant a review, based upon the application for review and the response thereto, without oral argument or further written presentation, unless the Commission shall otherwise direct.

(b) *Notice of review.* If the Commission should determine to review an initial decision, the Hearing Clerk shall serve a copy of its order granting review upon each of the parties.

(c) *Scope of review.* Unless the Commission shall otherwise direct, only the issues presented for review as set forth in the application, and all subsidiary issues subsumed therein, will be considered by the Commission.

(d) *Briefs and Appendix to Briefs.* In the event the Commission should determine to review the initial decision, the parties shall file briefs and designate the contents of the appendix in accordance with the procedures set forth in § 10.102 of the Commission's rules of practice: *Provided,* That in reparation proceedings the brief of the party who sought review (or if no party sought review, the brief of the complainant) shall be filed within thirty (30) days after service upon the parties of the Commission's order granting review of the initial decision.

(e) *Oral argument.* Any party may request, in writing and within the time provided for filing the initial briefs, the opportunity to present oral argument before the Commission, which the Commission may in its discretion grant or deny. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument shall be in accordance with the provisions of § 10.103 of this chapter.

§ 12.102 The Record of Proceeding.

If the Commission grants an application for review of an initial decision or the Commission decides on its own initative to review an initial decision, the record of the proceedings shall be made available to the Commission. The record of the proceeding shall include: The pleadings, motions and requests filed, and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed therein; any statements or stipulations filed under the summary procedures; any documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions, and orders and briefs as may have been permitted to be filed in connection with the hearing; such statements of objections, and briefs in support thereof, as may have been filed in the proceedings; and the initial decision.

The foregoing rules shall be effective on *January 23, 1976.*

The Commission is cognizant of the fact that the period for comment on these rules in their proposed form was limited. The Commission would therefore wish to encourage all interested persons to continue to submit comments and suggestions on these rules subsequent to their effective date and would be especially interested in observations gained from practice pursuant to these rules. The Commission will fully evaluate all such comments and suggestions received and will propose amendments to the rules if the desirability of amendments should be demonstrated.

All interested persons desiring to comment on these rules relating to reparation proceedings should submit such comments in written form to the Commodity Futures Trading Commission, 1120 Connecticut Avenue, NW., Washington, D.C. 20036, Attn: Secretariat. All comments submitted to the Commission will be available for public inspection.

Issued in Washington, D.C. on January 22, 1976.

By the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

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